

No. 13975

United States
Court of Appeals
for the Ninth Circuit

TAM DOCK LUNG, as Guardian Ad Litem for
TAM CHUNG FAY and TAM FAY HING,
Appellant,
vs.

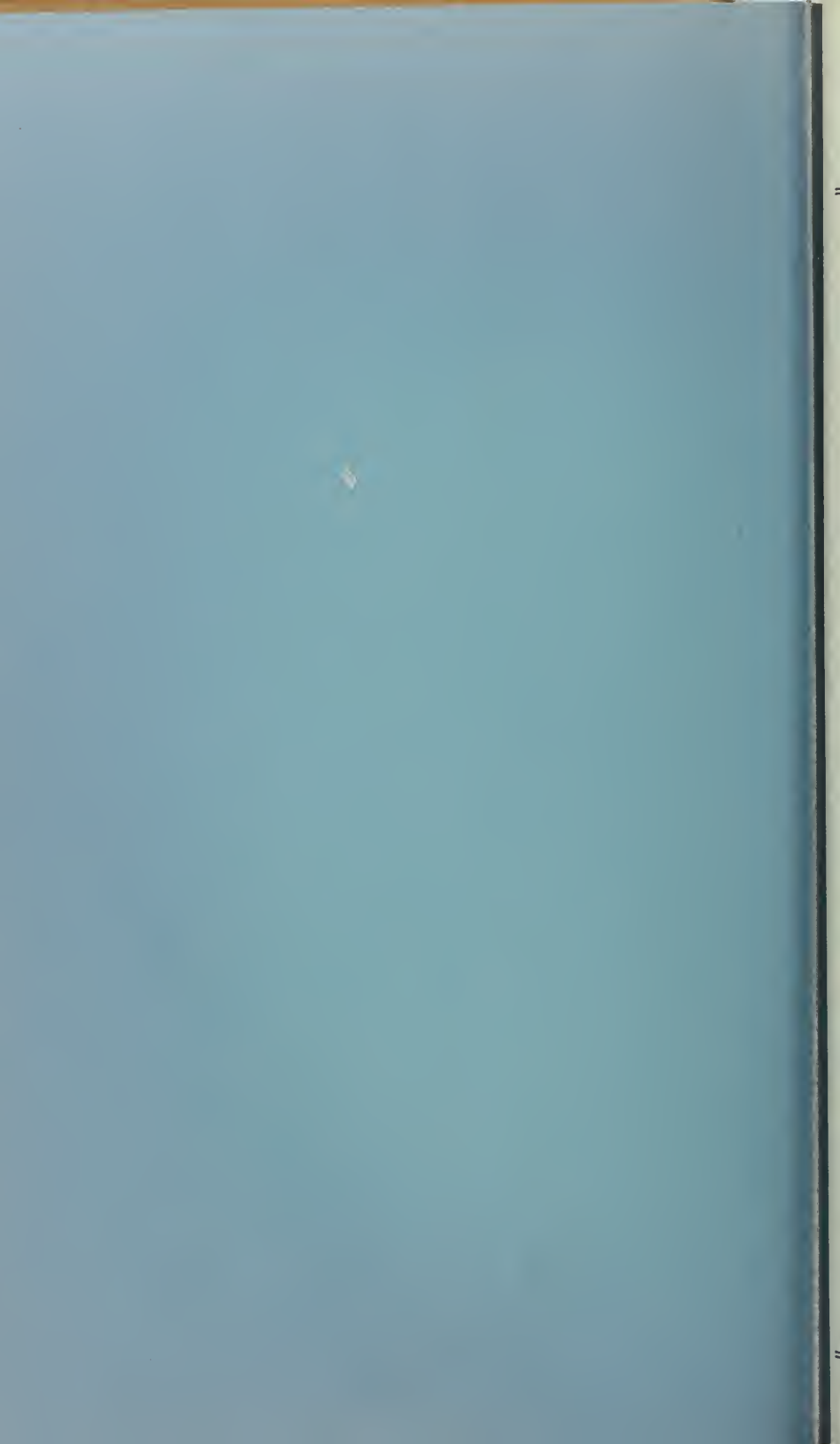
JOHN FOSTER DULLES as Secretary of State,
Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Central Division.

FILED

NOV 12 1953



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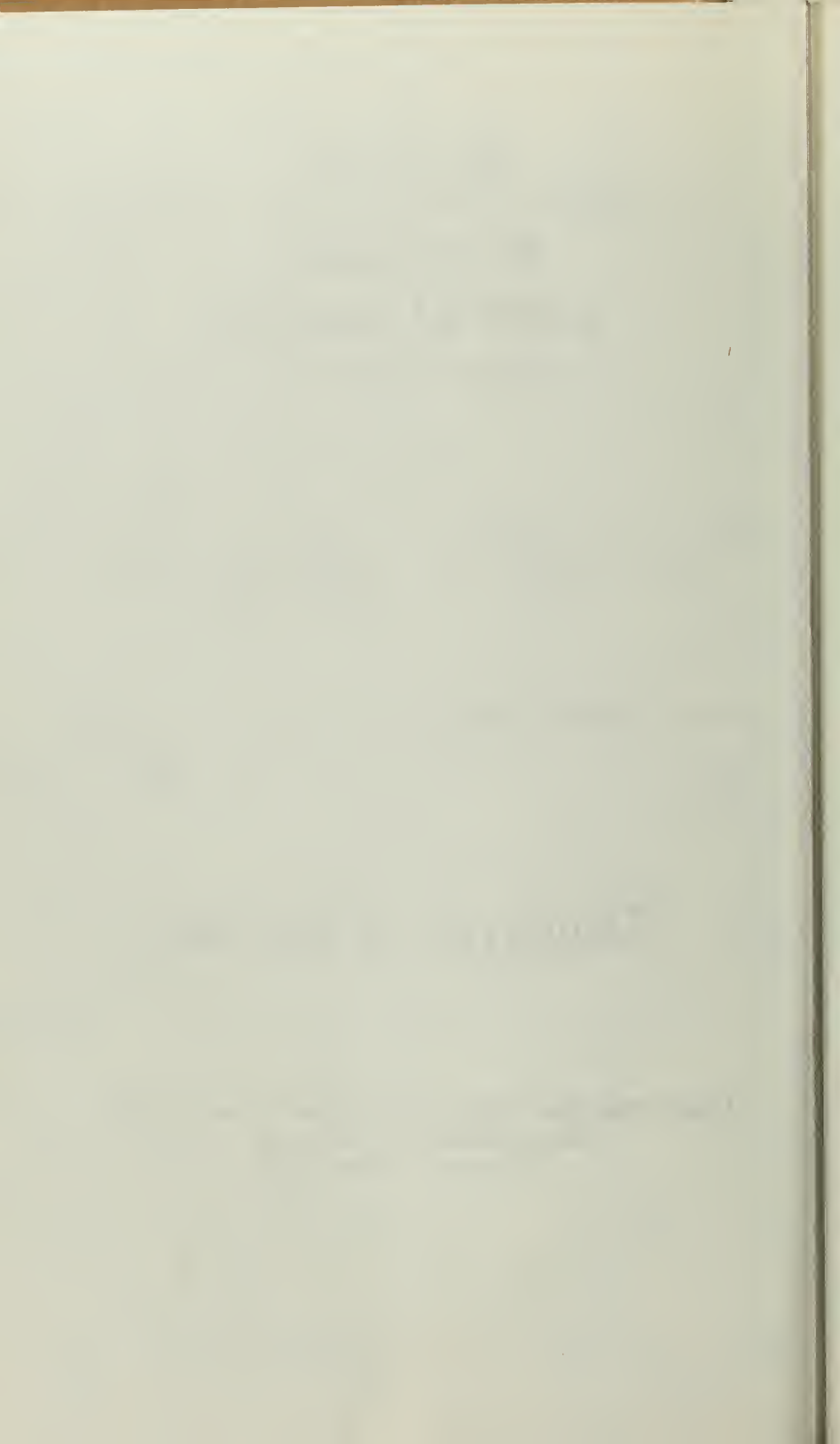
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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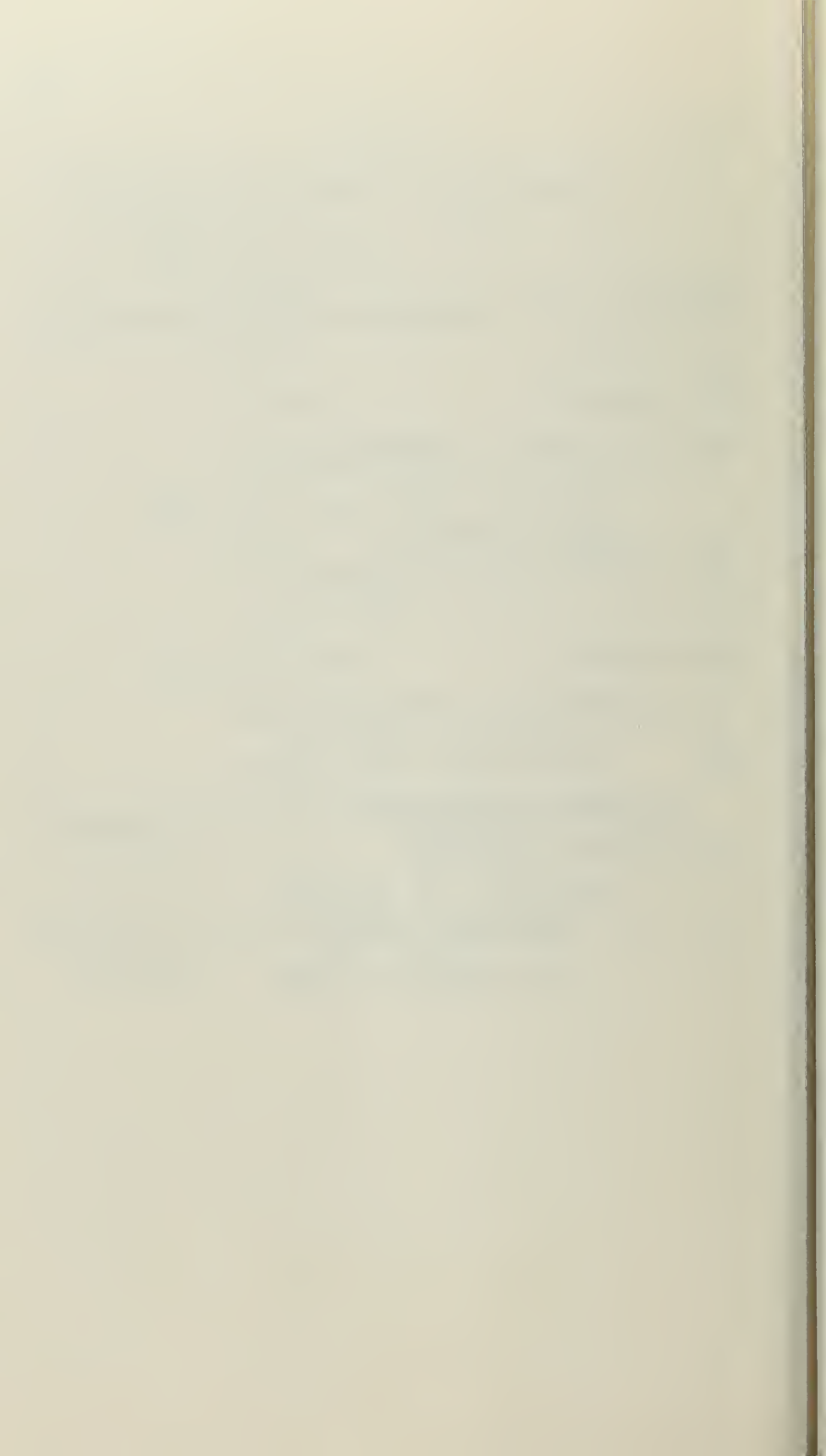
NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

WILLIAM E. CORNELL,
812 Rowan Bldg.,
458 S. Spring St.,
Los Angeles 13, Calif.

For Appellee:

LAUGHLIN E. WATERS,
United States Attorney;
CLYDE C. DOWNING,
ARLINE MARTIN,
Assistants U. S. Attorney,
600 Federal Bldg.,
Los Angeles 12, Calif.



In the United States District Court in and for
the Southern District of California, Central
Division

No. 13,842-C

TAM DOCK LUNG, as Guardian Ad Litem for
TAM CHUNG FAY and TAM FAY HING,
and TAM CHUNG FAY and TAM FAY
HING,

Plaintiffs,

vs.

DEAN ACHESON, as Secretary of State,
Defendant.

PETITION TO ESTABLISH NATIONALITY;
DECLARATORY JUDGMENT UNDER
SECTION 503 OF THE NATIONALITY
ACT OF 1940

Come now the plaintiffs, Tam Chung Fay and
Tam Fay Hing, individually, and by their guardian
ad litem, Tam Dock Lung, and complain of the
defendant and for cause of action allege:

I.

For the purpose of this action, Tam Dock Lung
was appointed by the above-entitled Court and now
is the guardian ad litem of plaintiffs, Tam Chung
Fay and Tam Fay Hing;

II.

That each plaintiff, Tam Chung Fay and Tam
Fay Hing, is a true and lawful blood child of Tam

Dock Lung, who is a citizen of the United States; that as evidence of his United States citizenship, Tam Dock Lung holds Certificate of Identity No. 21270 issued to him on November 11, 1915, at San Francisco, California, by the Immigration Service; showing his admission at San Francisco, California, as the son [2*] of a native; that said Tam Dock Lung was born on the 24th of November, 1888 (KS 14-10-21), at Don Hong Village, Toi Shan District, China;

III.

That said Tam Dock Lung was first admitted to the United States as a citizen thereof at San Francisco, California, when he arrived October 27, 1915, on the SS "Mongolia" (San Francisco file number 14776/2-5); that said Tam Dock Lung first arrived in the United States at San Francisco, California, in July, 1909, on the SS "Mongolia"; that since said first arrival the said Tam Dock Lung has made three trips from the United States to China, as follows, to wit:

Departed from San Francisco on November 21, 1914, ex SS "Siberia"; returned to San Francisco on Oct. 27, 1915, ex SS "Mongolia";

Departed from San Francisco on September 3, 1924, ex SS "President Pierce"; returned to San Francisco on June 2, 1927, ex SS "President Grant";

Departed from San Francisco on October 11, 1930, ex SS "President Jefferson"; returned to San Francisco in October, 1933, ex SS "President Coolidge";

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

IV.

That the said Tam Dock Lung was married to Fung Shee in February, 1908 (KS 34-1), at Don Hong Village, Toi Shan District, China; that said marriage was contracted in accordance with the marriage customs and ceremonies approved and legally recognized in China; that no official record of such marriage is available in China so far as the said Tam Dock Lung is informed; that the plaintiff, Tam Chung Fay, was born at Don Hong New Village, Toi Shan, China, on October 4, 1925 (CR 14-8-17); that he is now residing in Hong Kong awaiting travel documents to the United States; that the plaintiff, Tam Fay Hing, was born at Don Hong New Village, Toi Shan, China, on March 5, 1927 (CR 16-2-2); that he is now residing in Hong Kong awaiting travel documents to the United States; that each of the plaintiffs is issue of the [3] aforesaid marriage of Tam Dock Lung and Fung Shee; that the aforesaid marriage and the birth of each of said plaintiffs was duly reported to the Immigration and Naturalization Service by the said Tam Dock Lung upon each and every occasion of his examination by that Service;

V.

That the said Tam Dock Lung is and has been continuously since 1933 a resident within the Southern District of California, Central Division; that the petitioners, Tam Chung Fay and Tam Fay Hing, claim permanent residence in the Southern

District of California, Central Division, and within the jurisdiction of this Court;

VI.

That the said Tam Dock Lung caused to be filed with the American Consulate General at Hong Kong, China, on or about the 13th day of June, 1951, an application for the issuance of a United States passport or travel document in behalf of each of the plaintiffs herein; that each of said plaintiffs was advised by the American Consulate General at Hong Kong on the 8th day of January, 1952, that said petitioner's application had been denied and that "the American Consulate General declines to afford you facilities for the execution of an affidavit for the purpose of traveling to the United States"; that the plaintiffs claim that the refusal of the American Consulate General at Hong Kong to permit the said Tam Chung Fay and Tam Fay Hing to proceed to a port of entry in the United States for the purpose of having their and each of their admissibility determined by the administrative agency charged with such duty is an arbitrary and unreasonable refusal or denial of a right or privilege of a United States national;

VII.

That the defendant is the duly appointed, qualified and acting Secretary of State of the United States; that the plaintiffs' application for documentation as a United States citizen was denied by the American Consulate General at Hong Kong,

an official executive [4] of the defendant herein, in the month of January, 1952; that the Department of State through its official executive at Hong Kong did, on the 8th day of January, 1952, deny the plaintiffs, and each of them, a right or privilege as a national of the United States;

VIII.

That this complaint is filed and these proceedings are instituted against the defendant under Section 503 of the Nationality Act of 1940 (54 Stat. 1171, 1172, 8 U.S.C. 903), for a judgment declaring the plaintiffs and each of them to be a national of the United States;

IX.

That neither of the plaintiffs has ever committed any act or executed any instrument of expatriation or renounced his United States citizenship; that the plaintiffs and each of them are entitled to be declared a national of the United States;

X.

That the plaintiff, Tam Chung Fay, and the plaintiff, Tam Fay Hing, each claims to be a United States citizen and/or national, such citizenship and/or nationality having been acquired pursuant to the provisions of Section 1993, Revised Statutes of the United States, as amended by the Act of May 24, 1934, and Section 201(g) of the Nationality Act of 1940 (8 U.S.C.A. 601(g));

Wherefore, each plaintiff prays for judgment declaring him to be a national of the United States

and for such other and further relief as may be just and proper.

BRENNAN & CORNELL,

By /s/ BERNARD BRENNAN,
Attorneys for Plaintiffs.

Duly verified.

[Endorsed]: Filed February 18, 1952. [5]

[Title of District Court and Cause.]

ANSWER

Comes Now the defendant, Dean Acheson, as Secretary of State, through his attorneys, Walter S. Binns, United States Attorney for the Southern District of California; and Clyde C. Downing and Arline Martin, Assistants United States Attorney for the Southern District of California, and in answer to plaintiff's Complaint herein, admits, denies and alleges as follows:

I.

Admits the allegations contained in Paragraph I of plaintiff's Complaint.

II.

Denies the allegations contained in Paragraphs II, III, IV, V, VI, IX and X of plaintiffs' Complaint.

III.

Referring to the allegations contained in Paragraph VII of plaintiff's Complaint, admits that the

defendant is the duly qualified and acting [11] Secretary of State of the United States; denies each and every other allegation therein contained.

IV.

Defendant neither admits nor denies the allegations contained in Paragraph VIII, the same being a conclusion of law.

For a Further, Separate and Second Defense, Defendant Alleges:

I.

The Complaint of plaintiff fails to state a claim upon which relief can be granted.

Wherefore, defendant prays for a judgment dismissing said Complaint and denying the relief prayed for therein.

WALTER S. BINNS,
United States Attorney;

CLYDE C. DOWNING,
Assistant U. S. Attorney,
Chief of Civil Division;

/s/ ARLINE MARTIN,
Assistant U. S. Attorney,
Attorneys for Defendant.

Affidavit of service by mail attached.

[Endorsed]: Filed March 31, 1952. [12]

[Title of District Court and Cause.]

MINUTES OF THE COURT—DEC. 30, 1952

Present: The Honorable Harry C. Westover,
District Judge.

Proceedings: For further trial. Both sides answer ready. Court orders trial proceed.

The following witnesses are sworn and testify on behalf of Plaintiff:

Tam Dock Lung,
Tam Chung Fay,
Tam Hin Soon,
Tam Fay Hing.

(Both sides rest.)

The following exhibits are admitted into evidence:

Plaintiff:

7 (translation to be furnished later).

The Court Finds: that plaintiffs have not sustained the burden of proof and orders judgment in favor of defendant and against plaintiffs; attorney for defendant to prepare findings of fact, conclusions of law, and judgment.

EDMUND L. SMITH,
Clerk;

By /s/ E. M. ENSTROM, JR.,
Deputy Clerk. [14]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above-entitled case having come on for trial as to each of the plaintiffs, Tam Chung Fay and Tam Fay Hing, and having been tried on December 23, 24 and 29, 1952, before the Honorable Harry C. Westover, judge presiding, without a jury, the plaintiffs appearing by their attorneys, Brennan and Cornell, by J. J. Irwin, and the defendant appearing by his attorneys, Walter S. Binns, United States Attorney; Clyde C. Downing and Arline Martin, Assistants U. S. Attorney, and evidence having been introduced on behalf of the plaintiffs and the defendant, and the Court having considered the same, and having heard the arguments of counsel and being fully advised in the premises, makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

I.

For the purposes of this action, Tam Dock Lung was appointed by the above-entitled Court as the guardian ad litem of plaintiffs, Tam Chung Fay and Tam Fay Hing. [15]

II.

That the defendant, Dean Acheson, is the duly appointed, qualified and acting Secretary of State of the United States and as such is the head of the United States Department of State. That on

or about January, 1952, said United States Department of State refused to document each of the plaintiffs herein as citizens or nationals of the United States on the ground that said plaintiffs and each of them were not citizens or nationals of the United States.

III.

That Tam Dock Lung, alleged father of each of said plaintiffs, on or about November, 1915, was issued a Certificate of Identity, No. 21270 by the Immigration and Naturalization Service at San Francisco, California, and he was, on or about that date, admitted to the United States from China as the son of a native.

IV.

That on or about February, 1952, said Department of State of the United States issued to each of said plaintiffs Certificates of Identity, pursuant to the provisions of Section 503 of the Nationality Act of 1940 (8 U.S.C. 903) which Certificates of Identity state that the nationality of each of said plaintiffs was pending before the United States District Court and that each of said plaintiffs may be admitted to the United States with such Certificate, upon condition that each of said plaintiffs be subject to deportation in case it is decided by said Court that said plaintiffs are not nationals of the United States. That each of said plaintiffs entered the United States as temporary visitors pursuant to the conditions of said Certificates of Identity. Each of

said plaintiffs arrived in the United States on or about April 14, 1952, and was temporarily released on bond of one thousand (\$1,000.00) dollars to the Immigration and Naturalization Service, and since that date has been residing in Los Angeles, California.

V.

The evidence adduced by each of said plaintiffs and their witnesses, Tam Dock Lung, alleged father; and Tam Hin Soon, alleged brother, contains so many discrepancies relating to subjects about which each and all of said persons and [16] witnesses should be in agreement, and the credibility of the testimony of each of said plaintiffs and of each of said witnesses has been so impeached that the Court does not believe the testimony of each of said plaintiffs or said witnesses and there is no credible evidence to support plaintiffs' claims that they are United States citizens.

VI.

That each of said plaintiffs was born in China; that the plaintiff, Tam Chung Fay, is not the son of Tam Dock Lung, and the plaintiff Tam Fay Hing, is not the son of Tam Dock Lung, and neither of said plaintiffs are citizens or nationals of the United States.

Conclusions of Law

I.

That each of said plaintiffs has been denied the right or privilege as a national of the United States by the defendant, the United States Department of

State, upon the ground that each of said plaintiffs is not a national of the United States.

II.

That jurisdiction of this Court in the above-entitled action is pursuant to the Act of October 14, 1940, Chapter 876, Title 1, subchapter 5, Section 503, 54 Stat. 1171 (8 U.S.C. 903).

III.

That the burden is on each of said plaintiffs to establish his claim to United States nationality and citizenship and each of said plaintiffs has failed to sustain said burden and the Court concludes that the plaintiff, Tam Chung Fay, is not a national or citizen of the United States and is not a son of Tam Dock Lung; and that the plaintiff, Tam Fay Hing, is not a national or citizen of the United States and is not a son of Tam Dock Lung.

IV.

Judgment should be entered in favor of the defendant and against the plaintiff and each of them in the above-entitled action, dismissing the Complaint of each plaintiff and adjudging that each of said plaintiffs are not citizens of [17] the United States, and directing that each of said plaintiffs be deported to China pursuant to the Certificates of Identity upon which each of said plaintiffs were admitted to the United States and that upon compliance with subject Order that said bonds in the sum of one thousand (\$1,000.00) dollars be exoner-

ated; that costs be awarded the defendant herein.

Dated: This 12th day of February, 1953.

/s/ HARRY C. WESTOVER,
Judge, United States District
Court.

Copy received.

Affidavit of service by mail attached.

[Endorsed]: Filed February 12, 1953. [18]

In the United States District Court in and for the
Southern District of California, Central Division

No. 13842-HW

TAM DOCK LUNG, as Guardian Ad Litem for
TAM CHUNG FAY and TAM FAY HING;
and TAM CHUNG FAY and TAM FAY
HING,

Plaintiffs,

vs.

DEAN ACHESON, as Secretary of State,
Defendant.

JUDGMENT

The above-entitled case having come on for trial and having been tried on December 23, 24, and 29, 1952, before the Honorable Harry C. Westover, judge presiding without a jury, the plaintiffs ap-

pearing by their attorneys, Brennan and Cornell, by J. J. Irwin, and the defendant appearing by his attorneys, Walter S. Binns, United State Attorney; Clyde C. Downing and Arline Martin, Assistants U. S. Attorney, and the Court having considered the arguments of counsel, and the Court having considered the same and the causes having been argued and submitted to the Court for its decision, and the Court having heretofore made and filed its Findings of Fact and Conclusions of Law and having ordered that a Judgment be entered in accordance therewith;

Now, Therefore, It Is Ordered, Adjudged and Decreed:

I.

Judgment is hereby entered in favor of the defendant and against each of the plaintiffs, Tam Chung Fay and Tam Fay Hing, in the above-entitled action, [20] and it hereby is adjudged that the action of each of said plaintiffs, Tam Chung Fay and Tam Fay Hing, shall be and the same is hereby dismissed and it is further adjudged that each of said plaintiffs, Tam Chung Fay and Tam Fay Hing, are not citizens or nationals of the United States.

It is hereby further ordered that each of said plaintiffs, Tam Chung Fay and Tam Fay Hing, be deported to China, pursuant to the conditions of Certificates of Identity upon which they were admitted to the United States and that upon compliance with this Order, that the bond of \$1,000.00 furnished by each of said plaintiffs to the Immigra-

tion and Naturalization Service be exonerated; and that the defendant recover costs herein.

Costs taxed at \$20.00.

Dated: This 12th day of February, 1953.

/s/ HARRY C. WESTOVER,
Judge, United States District
Court.

Copy received.

[Endorsed]: Filed February 12, 1953.

Docketed and entered February 13, 1953. [21]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO COURT OF
APPEALS UNDER RULE 73(B)

Notice Is Hereby Given that:

Tam Dock Lung, as Guardian Ad Litem for Tam Chung Fay and Tam Fay Hing, plaintiffs above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on February 13, 1953.

/s/ WILLIAM E. CORNELL,
Attorney for Plaintiffs.

[Endorsed]: Filed April 10, 1953. [22]

[Title of District Court and Cause.]

ORDER EXTENDING TIME ON APPEAL

Upon motion by counsel for plaintiffs, and there being no objection from counsel for the defendants, and good cause appearing therefor;

It Is Ordered that the time to file the record on appeal is hereby extended 90 days from the Notice of Appeal herein.

/s/ HARRY C. WESTOVER,
United States District Judge.

[Endorsed]: Filed May 19, 1953. [23]

[Title of District Court and Cause.]

STIPULATION FOR SUBSTITUTION OF
JOHN FOSTER DULLES, AS SECRETARY
OF STATE, AS PARTY DEFENDANT

It Is Hereby Stipulated, pursuant to the provisions of Rule 25 (d), Federal Rules of Civil Procedure, that John Foster Dulles, as Secretary of State, be substituted as party defendant in the above-entitled case.

Dated: July 20, 1953.

/s/ WILLIAM E. CORNELL,
Attorney for Plaintiffs.

WALTER S. BINNS,
United States Attorney;

CLYDE C. DOWNING,
Assistant U. S. Attorney,
Chief, Civil Division;

By /s/ ARLINE MARTIN,
Assistant U. S. Attorney,
Attorneys for Defendant.

It Is So Ordered:

This 20th day of July, 1953.

/s/ HARRY C. WESTOVER,
United States District Judge.

[Endorsed]: Filed July 20, 1953. [24]

In the United States District Court, Southern
District of California, Central Division

No. 13842-C

TAM DOCK LUNG, as Guardian Ad Litem for
TAM CHUNG FAY and TAM FAY HING,
Plaintiff,

vs.

DEAN ACHESON, as Secretary of State,
Defendant.

Honorable Harry C. Westover, Judge Presiding.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Appearances:

For the Plaintiff:

JOHN J. IRWIN, ESQ.

For the Defendant:

WALTER S. BINNS,

United States Attorney; by

ARLINE MARTIN,

Assistant United States Attorney.

December 23, 1952, 10:00 A.M.

The Clerk: Tam Dock Lung vs. Acheson, No. 13842.

Mr. Irwin: Ready for the plaintiffs, your Honor.

Miss Martin: Ready for the Government.

Mr. Irwin: By agreement with Miss Martin of the United States Attorney's office, subject to the Court's approval, we propose to try first case No. 13842.

The Court: It is perfectly all right with me.

Mr. Irwin: We have selected that one because that contains two plaintiffs. May the other cases trail?

The Court: The other two cases may trail. We probably won't get to them until some time next week. I expect to be able to dispose of these cases before the first of the year, unless counsel drag out these cases unduly.

Mr. Irwin: I have never been noted for that, your Honor.

The Court: We have adopted the procedure in these cases of excluding all witnesses except the plaintiff. We have the direct examination of all the witnesses before there is any cross-examination.

Mr. Irwin: That is quite agreeable, your Honor.

The Court: That eliminates the accusation that the witnesses got together after cross-examination and fixed up the stories.

Mr. Irwin: That is quite understandable, your Honor. [3*]

The Court: It is for the protection of the plaintiffs as well as the government.

Mr. Irwin: It is an assurance to counsel, because we are dealing in a foreign language. When your Honor speaks of the plaintiffs, you mean the guardian ad litem, I take it.

The Court: The guardian ad litem is usually a witness.

Mr. Irwin: He will be a witness.

The Court: I am talking about the boys.

Mr. Irwin: There are two boys in this case.

The Court: I will allow the two boys to remain in the court room and exclude the guardian, or I will allow him to remain in the court room and exclude the two boys.

Mr. Irwin: The guardian will be the first witness. It really makes no difference.

The Court: Let's exclude the two boys then. The guardian is really the plaintiff. We will exclude everybody except the guardian ad litem.

Mr. Irwin: Will the bailiff show them where to go?

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

The Court: We'd better have the interpreter tell them.

Mr. Irwin: Shall the interpreter be sworn and then advise them?

The Court: You can advise them before you swear her to tell them where to go.

I notice the defendant is Dean Acheson. You have brought this suit against him. Usually it is against the Attorney [4] General. Is that going to make a difference?

Miss Martin: It is only against the Attorney General when the people are here. But in this case the State Department has denied them a passport from China and they are here on certificates of identity. So the State Department is the proper party defendant.

The Court: Then we have the proper defendant. You may swear the interpreter.

(Lily L. Chan was thereupon duly sworn as interpreter.)

Mr. Irwin: May the record show, your Honor, I would like to have you inquire whether she ever met me before until this morning? Likewise, it is my understanding she has never talked to any of the witnesses or the plaintiffs in this case.

The Court: You are not acquainted with any of the witnesses in this case, are you?

Mrs. Chan: No.

The Court: You don't know the boys in the case?

Mrs. Chan: I did not know them until this morning.

The Court: The interpreter will get acquainted

with you before you get through with these cases. The interpreter is already acquainted with the District Attorney, so that is no disqualification.

Mr. Irwin: The first witness will be Tam Dock Lung.

May I speak to your Honor off the record on a personal situation? [5]

The Court: Yes. Off the record.

(Discussion off the record.)

Mr. Irwin: Your Honor, may I inquire of your preference here on this? The District Attorney has kindly furnished me with photostats of Immigration Department records of the plaintiffs.

Miss Martin: I will stipulate no foundation need be laid.

The Court: You can offer them in evidence.

Mr. Irwin: That might help to conduct the examination.

The Court: They may be received.

Mr. Irwin: I hand to the clerk the first document entitled "Exempt Class Landed Direct from Steamer," bearing date October 27, 1915, a photostat.

The Court: It may be received and marked Exhibit 1.

The Clerk: Plaintiffs' Exhibit 1 in evidence.

(The document referred to was received in evidence and marked Plaintiffs' Exhibit No. 1.)

Mr. Irwin: Next I hand to the clerk Form 2505, United States Immigration Service. This photostat has the month obscured. The day is the 4th and the year is 1924. It is case No. 12017.

The Court: It may be received and marked Plaintiffs' Exhibit 2.

The Clerk: So marked, your Honor. [6]

(The document referred to was received in evidence and marked Plaintiffs' Exhibit No. 2.)

Mr. Irwin: The next is a form No. 2602 of the U. S. Immigration Service, photostat of a document bearing date June 2, 1927.

The Court: It may be received and marked Exhibit 3.

The Clerk: So marked.

(The document referred to was received in evidence and marked Plaintiffs' Exhibit No. 3.)

Mr. Irwin: The next is a Form 2505, U. S. Immigration Service, a photostat bearing date August 30, 1930.

The Court: It may be received and marked Exhibit 4.

The Clerk: So marked.

(The document referred to was received in evidence and marked Plaintiffs' Exhibit No. 4.)

Mr. Irwin: Next is a document, photostat, Form 2602, U. S. Immigration Service, bearing date October 30, 1933.

The Court: It may be received and marked Exhibit 5.

The Clerk: So marked, Plaintiffs' Exhibit 5.

(The document referred to was received in evidence and marked Plaintiffs' Exhibit No. 5.)

The Court: It may be possible for you to stipulate to a lot of the facts in this case.

Mr. Irwin: I was going to inquire. I understand Miss Martin is willing to stipulate with me that the guardian, Tam [7] Dock Lung, the alleged father, was heretofore admitted as a citizen of the United States. It appears in one of the photostats, Miss Martin.

Miss Martin: Yes. We will stipulate he was admitted in the United States in November, 1950, on a certificate No. 21270 at San Francisco by the Immigration and Naturalization Service as the son of a native.

Mr. Irwin: As the son of a citizen.

Miss Martin: As a son of a native is how it reads.

Mr. Irwin: Thank you, Miss Martin. Would you follow these photostats with me and perhaps we can condense them. Summarizing, may it be stipulated the photostats which have just been received, Plaintiffs' Exhibits 1 to 5, show in part that the plaintiff first came to the United States in 1909. That he made three trips thereafter to China. On the first trip he left the United States in 1914, returning in 1915. The second, he left in 1924 from San Francisco, and returned in 1927. The third trip, he left August 30, 1930, and returned October 30, 1933.

Is that a correct summary as to the departures and returns as reflected by the immigration record and show in the Plaintiffs' Exhibits 1 to 5?

Miss Martin: With the exception that the last

time he left it was October 11, 1930, rather than the date you gave.

Mr. Irwin: I will be happy to accept the correction. [8]

Miss Martin: We will then so stipulate.

TAM DOCK LUNG

called as a witness by and on behalf of the plaintiffs herein, having been first duly sworn, was examined and testified through the interpreter as follows:

The Clerk: Your name is Tam Dock Lung?

The Witness: Yes.

The Court: I notice there are two older children, Tam Hin Sik and Tam Jing Hing. Have they been admitted?

Mr. Irwin: First of all, may we dispose of this, that according to the records, on one instance he shows the oldest son died. I don't ask you to accept the truth of that, but may it be stipulated Plaintiffs' Exhibit 5, which is the statement made to the U. S. Immigration Service upon the plaintiff's last return to the United States, shows that he indicated and stated under oath that his eldest son, Tam Hin Sik, had died in Shanghai in January, 1932?

Miss Martin: I will stipulate that fact. We will stipulate that the plaintiff signed and filled out all of these statements, Exhibits 1 to 5, and stated the facts as therein contained.

Mr. Irwin: Thank you. Then I will just have one question on that. As to the second son, the records indicate, which is the fact, that the second son, Tam Hin Soon, has heretofore [9] been ad-

(Testimony of Tam Dock Lung.)

mitted to the United States as the son of the plaintiff.

Miss Martin: So stipulated.

The Court: He was admitted when?

Mr. Irwin: 1935. Have you got the exact date there?

Miss Martin: October 27, 1935.

The Court: All right. One other question. Is the wife still living?

Mr. Irwin: That is my information.

The Court: Is she still in China?

Mr. Irwin: Yes, your Honor. May I proceed?

The Court: Yes, you may proceed.

Direct Examination

By Mr. Irwin:

Q. Is your wife still living? A. Yes.

Q. She is still in China?

A. In China, in Hong Kong, China.

Q. Your oldest boy died? A. Yes.

Q. Your second son is in the United States?

A. Yes, in Los Angeles.

Q. The two boys who are applying for entry as your sons are Tam Chung Fay and Tam Fay Hing, is that true? [10] A. Yes.

Q. Do you have any younger children than those two boys? A. Yes.

Q. What are they? Boys or girls?

A. Two boys and one girl.

Q. Where is the girl?

(Testimony of Tam Dock Lung.)

A. The daughter is in Hong Kong. The son is in Canton, China, studying.

Q. The name of the daughter is the one listed as Tam Mow Don? A. Yes.

Q. Is the name of the son still in China who is studying at Canton Tam Jing Hing?

A. Yes, Tam Jing Hing.

Mr. Irwin: I ask to have this marked for identification. It is a photograph, your Honor.

The Court: It may be marked for identification.

The Clerk: Plaintiffs' Exhibit 6 for identification.

(The photograph referred to was marked Plaintiffs' Exhibit No. 6 for identification.)

Q. (By Mr. Irwin): I show you Plaintiffs' Exhibit 6 for identification and ask you if you can tell the court who the people are in that picture?

A. Yes. The one in the center in front is my wife. [11] The one on her right, sitting position, is Mow Don, the daughter.

Q. That is the daughter in China?

A. Yes, the one in China. The middle one is Tam Chung Fay, back of my wife.

Q. That is one of the applicants before the court here today?

A. One of the applicants. At left standing, the left side of my wife standing, is Tam Fay Hing.

Q. That is the other applicant here before the court?

A. Yes. That is these two here (indicating).

Q. How did you receive that picture?

(Testimony of Tam Dock Lung.)

A. They brought it over.

Q. When you say "they," you mean the boys?

A. Yes, the two sons brought it over.

Q. Therefore, you do not know yourself as to just where it was taken so we will have to ask the boys for that, is that true?

A. The sons know where it was taken.

Q. You identify the older lady of the two in this Exhibit 6 for identification as your wife. What is her name? A. Fung Shee.

Q. When were you married?

A. K. S. 34, first month, 39th day.

Q. What year? [12]

The Interpreter: It is March 1, 1908.

The Court: That is K. S. 34. What was the month and date?

The Witness: First month, 29th day.

The Interpreter: That is the equivalent of 1908, March 1.

The Court: 1908 or 1906?

The Interpreter: 1908.

Mr. Irwin: That is what appears in the record, too, your Honor, that he first showed there in the photostat.

Q. Did you say 34 K. S. 1-29? A. Yes.

Mr. Irwin: The same date appears as given by the witness, your Honor, in this exhibit.

The Court: Yes, I see that.

Q. (By Mr. Irwin): This lady you have identified as your wife and given her name, in Plaintiffs' Exhibit 6, where were you married?

(Testimony of Tam Dock Lung.)

A. Don Hong Village, Toy Shan, Hay Yin, Canton, China.

The Court: Can we locate the village? Where is it from Hong Kong?

Mr. Irwin: I say you have a map and everything, Judge.

The Interpreter: Toy Shan is in Canton or Kwangtung Province, opposite Hong Kong.

The Court: What is the nearest large [13] village?

Miss Martin: Are you asking the witness or the interpreter.

The Court: I am just asking for information.

Mr. Irwin: I have no objection if you inquire of the interpreter.

The Court: Is Toy Shan across the bay from Hong Kong? Ask the witness that.

The Interpreter: Are you asking for Toy Shan or Hay Yin?

Mr. Irwin: First, where is the village with reference to the nearest large city?

The Witness: It is not near any particular city, but it is a section within Hay Yin. It is like a district.

The Court: Is it east or west of Hong Kong?

The Witness: West of Hong Kong. Hong Kong is east of us.

The Court: To go from Hong Kong to Toy Shan, do you go across the bay?

The Witness: You have to cross the water to go to Hay Yin.

(Testimony of Tam Dock Lung.)

The Court: When you go from Hong Kong to Hay Yin, do you go by boat or train or car?

The Witness: By steamer.

The Court: All right. I just wanted to know the general direction. [14]

Miss Martin: I would like to clear up something. I thought the interpreter said it was near Canton. The witness has been talking in terms of Canton.

The Court: It could be near Hong Kong and near Canton.

Mr. Irwin: I was going to go into that.

The Court: It is the apex of a triangle between the three places, according to my map.

Q. (By Mr. Irwin): This village where you were married, was that your village where you had your home? A. Yes, it is my home.

Q. Were you married according to Chinese custom? A. Yes.

Mr. Irwin: Is there any question about whether they were married?

Miss Martin: It is up to you. It's your case.

Mr. Irwin: Do you make a point of it?

Miss Martin: I don't know. I don't know whether I will make a point of it.

Q. (By Mr. Irwin): Will you tell me how you and your wife were married? Just what were the proceedings?

A. The ceremony we had was we drank together. We drank together.

Q. Was that the ceremony that was recognized

(Testimony of Tam Dock Lung.)

as a legal marriage at the time you and your wife were married in 1908? A. Yes. [15]

The Court: No issue has ever been raised about sufficiency of the marriage ceremony.

Mr. Irwin: I asked counsel and she couldn't tell me whether she would object to lack of foundation.

The Court: We all recognize that these marriages are by custom, rather than by church or by state.

Mr. Irwin: That is my understanding, your Honor.

Q. Now, then, you came to the United States first in 1909? This is preliminary.

Miss Martin: All right, because I will object if you lead him.

Q. (By Mr. Irwin): You came to the United States first in 1909. When you first came to the United States, did you leave your wife in your home village? A. Yes.

Q. You first returned to China, according to the photostat record of the United States Immigration Service, in 1914. When you went back to China in 1914, where did you go?

A. I went back to Don Hong Village.

Q. Which was your home? A. Yes.

Miss Martin: Let's don't have any more leading questions.

Mr. Irwin: He testified that is where he lived.

Miss Martin: I will object to counsel testifying or leading. [16]

Q. (By Mr. Irwin): Referring again to Plain-

(Testimony of Tam Dock Lung.)

tiffs' Exhibit 6, when you returned to Don Hong Village in 1914, was this lady whom you have identified as your wife there? A. She was home.

Q. How long did you stay in your village at that time? A. Back and forth, one year's time.

Q. Did you and your wife live together during that period when you returned in 1914?

A. Yes.

Q. When did you return to the United States?

A. C. R. 4.

The Interpreter: 1915.

The Court: Now, may I ask a question?

Mr. Irwin: Certainly, your Honor.

The Court: When you went back to China in 1914, went back to your village, at that time did you have a child?

The Witness: It wasn't born yet.

The Court: It wasn't born yet. All right.

Mr. Irwin: I may clear that up, and I won't lead, with your Honor's permission.

The Court: Just a minute. Let me ask the witness a question.

Mr. Irwin: Certainly.

The Court: You say you came to the United States originally in 1909. You also say you were married in 1908. You were [17] married before you came to the United States the first time, is that correct?

The Witness: That's right. I was married then.

The Court: When you came to the United States the first time in 1909, did you have a child?

The Witness: Yes.

(Testimony of Tam Dock Lung.)

The Court: What was the name of that child?

The Witness: Tam Hin Sik.

The Court: When was Tam Hin Sik born?

The Witness: First year, first month, 15th day.

The Interpreter: 1909, February 5.

The Court: How long after you came to the United States was your son born?

Mr. Irwin: Would your Honor permit this suggestion? Which trip? He said the first child was born when he left.

The Court: He came to the United States in 1909. What month and what day did you come to the United States?

The Witness: It was Sun Tung, the first year, fourth month, and I can't recall the exact date.

The Court: You say the first year, fourth month?

The Witness: Sun Tung, first year, fourth month.

The Court: He said something about arriving.

Miss Martin: Translate that to English, please.

The Court: Will you translate the first year, fourth month, please? [18]

The Interpreter: From May 19 on to June 17th.

The Court: What does the record show? It shows 1909.

Mr. Irwin: Yes, and that is what he says.

The Court: What was the date?

Mr. Irwin: I think the record shows—let me see Plaintiffs' Exhibit 1, your Honor.

(Testimony of Tam Dock Lung.)

The Court: That doesn't do any good, I don't think.

Miss Martin: We could not find in the immigration files the original arrival statement.

The Court: All right. Now, let's get back to this trip when you came to the United States in 1909. You said it was the first year and the fourth month. When you came to the United States in 1909, was your child Tam Hin Sik then born?

The Witness: Yes.

The Court: How old was he?

The Witness: About three months old.

The Court: All right.

Mr. Irwin: Thank you, your Honor. I had skipped that because that one is dead.

Q. I was asking you about your trip to China in 1914. The record shows a return to the United States in 1915. I am just giving that as preliminary. A. That's right.

Q. I believe you told the judge that during that trip, at the time you left China, no other child had been born, is [19] that right?

A. The second son was not born yet.

Q. Was your wife pregnant when you left China? A. Yes.

Q. When did you arrive back in the United States on that trip?

A. I return C. R. 4, the eighth month.

The Interpreter: C. R. 4 would be 1915. The eighth month would be from September 9 to October 8.

(Testimony of Tam Dock Lung.)

Q. (By Mr. Irwin): May I ask this question? At the time you returned to the United States in 1915, did you fill out some papers for the immigration authorities?

The Court: There is no argument about that.

Mr. Irwin: Except he is off on the date a couple of weeks, your Honor.

The Court: Well, he gives the right year, doesn't he?

Mr. Irwin: Yes.

The Court: He said September or October.

Mr. Irwin: It was October 27th.

The Court: The record is the best evidence, rather than his memory.

Mr. Irwin: I was going to bring out his memory was better at that time than today.

The Court: Go ahead.

Q. (By Mr. Irwin): After you returned in September or [20] October, 1915, did you thereafter learn whether or not a second child had been born to your wife? A. Yes.

Q. How did you find that out?

A. After I returned to the United States, my wife wrote and informed me that the baby is about a month old.

Q. Did she tell you what the baby was, a boy or a girl? A. It was a son.

The Court: Supposing we find out what the name of this child was?

Q. (By Mr. Irwin): What name was given this second son of yours? A. Tam Hin Soon.

(Testimony of Tam Dock Lung.)

The Court: What was the date of birth?

Q. (By Mr. Irwin): What was the date of your second son's birth? A. C. R. 4-9-3.

The Interpreter: 1915, October 11.

Q. (By Mr. Irwin): You next returned to China in 1924, according to the record. Is that true?

A. Yes.

Q. And when you went back to China, where did you go? A. Also went back to Don Hong.

The Court: When did he return to China?

Mr. Irwin: The second time, your Honor, was 1924. [21]

Miss Martin: May we have the month for that?

Q. (By Mr. Irwin): Will you give us the exact time in 1924 for the record?

A. C. R. 24, eighth month, I left San Francisco.

The Interpreter: C. R. 24 would be——

The Witness: The second time is C. R. 13.

Miss Martin: Will you translate C. R. 24-8?

The Interpreter: 1935, and four would be any time from May——

Miss Martin: He didn't say four, he said eight.

The Interpreter: Excuse me. Eight would be August 29 to September 27.

Mr. Irwin: 1935?

Miss Martin: 1935. C. R. 24-8 has been translated as August or September, 1935.

Mr. Irwin: I will restate the question. We have the record in his own handwriting right here.

Q. Will you please give us again the year that you returned to China the second time?

(Testimony of Tam Dock Lung.)

Miss Martin: And the month.

Mr. Irwin: Let's get the year first.

The Witness: 1924 was for the American date.

Miss Martin: Then I think the record will show that the interpreted it as a C. R. date, a Chinese date.

The Court: That is true. It is given as 1924, but there [22] was nothing to indicate to the interpreter that the witness was using the American date.

Miss Martin: There isn't?

The Court: Let's have the return to China the second time in the Chinese date, not the American date, but in the Chinese date.

The Witness: C. R. 13—eighth month, third day.

The Court: Translate that.

The Interpreter: It would be 1924, September 1.

The Court: September what?

The Interpreter: September 1.

Q. (By Mr. Irwin): When you left the United States on that date and returned to China, where did you go?

A. Went back to the Don Hong Village.

Q. Who of your family did you find there when you returned? A. My wife and children.

The Court: What children?

The Witness: The second son.

Q. (By Mr. Irwin): What about the first son, the one that was born in 1909? Where was he?

A. The older son went to Canton.

Q. When did he go to Canton?

(Testimony of Tam Dock Lung.)

A. I do not know the exact date.

Q. Let's see if we are clear. At the time you returned [23] to China in 1924, do we understand that your No. 1 son, your oldest son, had already left your native village? A. That's right.

Q. Who was left of your family when you arrived?

A. My wife was at the village home and the second son was in the village, also, attending school.

The Court: At that time, how old was the second son?

The Witness: About 10 years old.

Q. (By Mr. Irwin): When you arrived, who did your wife tell you this 10-year old child was?

A. When he came home in the afternoon from school, my wife informed me that this is my son.

Q. When you arrived on this trip, this is the second trip——

The Court: Just a minute. May I ask a question?

Mr. Irwin: Certainly, your Honor.

The Court: This was the first time you saw this second son?

The Witness: That was the time.

Q. (By Mr. Irwin): Now, how long did you stay at home with your wife on this trip?

A. Almost three years.

Q. Were there any children born of your wife and yourself during this trip?

A. Yes. [24]

Q. How many? A. Two.

Q. What were their names, please?

(Testimony of Tam Dock Lung.)

A. The third one was Tam Chung Fay. The fourth one is Tam Fay Hing.

Q. When was the third son born?

A. C. R. 14-8-17.

The Interpreter: October 4, 1925.

Q. (By Mr. Irwin): When was the fourth son born? A. C. R. 16-2-2.

The Interpreter: March 5, 1927.

Q. (By Mr. Irwin): Were both these boys born to your wife, Fung Shee? A. No error.

The Interpreter: In Chinese, when you say no error, that means that is true.

Q. (By Mr. Irwin): During this period you were home from 1924, when you returned, when did you come back to the United States?

A. C. R. 16-4-3.

The Interpreter: May 3, 1927.

Miss Martin: Will you double-check that?

Mr. Irwin: Yes, please ask that again. Let me ask this.

Miss Martin: Wait a minute. [25]

The Witness: The eighth month, I think it is the 16th year, eighth month.

Miss Martin: What day?

The Witness: I don't remember the day.

The Interpreter: Eighth month would be from August 27 to September 25.

The Witness: I don't remember. Wait a minute. C. R. 16—I left China the fourth month.

Miss Martin: Will the interpreter just check the English translation of C. R. 16-4-3?

(Testimony of Tam Dock Lung.)

The Interpreter: 1927, May 3.

Q. (By Mr. Irwin): I want to ask this. There might be a confusion. When did you leave China to come to the United States?

A. The fourth month.

Mr. Irwin: And that is what now?

The Interpreter: Could be the entire month of May.

Q. (By Mr. Irwin): I believe you testified your fourth son was born March 5, 1927, is that right?

The Court: No, March 5, 1926, I have it.

Miss Martin: No.

Mr. Irwin: 1927, your Honor.

The Interpreter: C. R. 16, your Honor, 1927 is the American.

Q. (By Mr. Irwin): At the time you left China in 1927 [26] two more boy children had been born to you and your wife? A. That's right.

Q. You told us when you returned in 1924, you found your wife and a boy about 10 years old who, your wife said, was the second son, is that true?

A. Yes.

Q. Did that boy, whom your wife identified as your second son, live with your wife and yourself from the time you arrived until when you left in 1927? A. We three lived in the same house.

Q. When you left in 1927, leaving your wife and your second son and your third and fourth sons, with whom did your wife and children make their home?

(Testimony of Tam Dock Lung.)

The Interpreter: You want to know the second, third and fourth sons?

Mr. Irwin: He said when he went back in 1924 and lived at home with the wife and second son, two children were born during that trip. I want to know when he left, he said he left in 1927, with whom was his wife and the three children living.

Miss Martin: Don't you think we ought to have you phrase a question?

The Court: Yes. Rephrase your question.

Q. (By Mr. Irwin): When you left China in May of 1927, with whom did your wife and three children stay? [27]

A. They all lived together in the same house.

Q. Who looked after them? Who took care of them when you were gone?

A. My wife looks after them.

The Court: Who owned this house?

The Witness: My father built it.

Q. (By Mr. Irwin): Did you have any brothers? A. Yes.

Q. Where were they living in 1927?

A. They were all in Los Angeles.

Q. There were no brothers living in China when you left in 1927, no brothers of yours, is that right?

A. No.

The Court: May I ask a question?

Mr. Irwin: Certainly.

The Court: Were there any children of any brothers living in this village in China in 1927?

The Witness: No.

(Testimony of Tam Dock Lung.)

Q. (By Mr. Irwin): You have told us you returned to the United States, leaving China in May, 1927. Did you make another trip, a third trip to China? A. Yes.

Q. When did you leave the United States on your third trip to China?

A. C. R. 19, eighth month, 20th day. [28]

The Court: Before you translate that, is that C. R. 19 Chinese or is it United States 19?

The Witness: C. R. 19 is the Chinese date.

The Court: All right. Now translate it.

The Interpreter: It would be October 11, 1930.

The Court: It's pretty near 11:00 o'clock and maybe this is a good place to stop for our morning recess.

Mr. Irwin: Thank you, your Honor.

The Court: We will now recess until 10 minutes after 11:00.

(Recess.)

The Court: You may proceed.

Q. (By Mr. Irwin): At the time of the recess, you were just leaving for China on your third trip. Where did you go after leaving San Francisco in 1930 for China? Where did you go when you got to China? A. To the same village.

Q. And who of your family was there when you arrived? A. My children, all my family.

Q. By your family, will you please name them again now? Who was there?

A. The wife was home, a second boy was at school, and the third and fourth were home.

(Testimony of Tam Dock Lung.)

Q. The second boy was at school where?

A. Don Hong Village school, in a school at Don Hong [29] Village.

Q. That is your village?

A. The old village, Don Hong Old Village.

Q. Did the second son stay at home at nights when you got there?

A. He returned home to live.

The Court: May I ask a question?

Mr. Irwin: Please do, your Honor.

The Court: You say you returned to Don Hong Village. Was there an old and a new village?

The Witness: Our home was at the new Don Hong Village.

The Court: The new village?

The Witness: Yes. The son went to the old Don Hong Village for schooling.

Q. (By Mr. Irwin): How far apart were they?

The Witness: When you walk, it takes about five or 10 minutes.

The Court: The family home you lived in, the home that your children were born in, was that home in the new village?

The Witness: They were born in the new village.

Q. (By Mr. Irwin): What time of the day did you arrive home? A. Before noon.

Q. When you arrived, the second boy was at school, is that right? [30]

A. Yes. He has not come home yet.

Q. Did you see the second boy the same day that you arrived home?

A. Yes, I saw him the same day.

The Court: How old was your second boy?

(Testimony of Tam Dock Lung.)

The Witness: 16.

Q. (By Mr. Irwin): You said that at home was your wife and the third and fourth sons. Did I so understand? A. That's right. No error.

The Court: How old was the third son?

The Witness: About 6.

The Court: How old was your fourth son?

The Witness: About 4.

Q. (By Mr. Irwin): How long did you stay at home on this trip?

A. About three years, three to four years.

Q. Were there any children born to your wife and you during this stay in China? A. Yes.

Q. How many? A. One boy, one girl.

Q. What was the name of the boy?

A. Tam Jing Hing, and the daughter was Tam Mow Don.

Q. When was the boy born? This would be the fifth boy. When was that boy born? [31]

A. C. R. 20-1-26.

The Interpreter: March 14, 1931.

Q. (By Mr. Irwin): When was the girl born?

A. C. R. 21, 10th month, 22nd day.

The Interpreter: November 19, 1932.

Q. (By Mr. Irwin): When you arrived on that trip in 1930, where was your first son?

A. Shanghai.

Q. When you left China in 1933, was your oldest boy living or dead? A. Died.

Q. Where did he die? A. Shanghai.

Q. When you left China in 1933 and left your

(Testimony of Tam Dock Lung.)

village home, whom of your family did you leave there? A. My family.

Q. Now, was your second son in the village when you left in 1933?

A. He was still in the village.

Q. His name was Tam Hin Soon?

A. Yes, Hin Soon.

Q. How old was he at the time you left in 1933?

A. 19.

Q. Your third son, one of the applicants here, Tam Chung Fay, how old was he when you left in 1933? [32]

A. About nine.

Q. Did you see your third son from the time you left China in 1933 until he arrived in the United States this year?

A. The third son, did you say?

Q. Yes. A. Not after I left.

Q. Now, when Tam Chung Fay, your third son, arrived in the United States, did you recognize him? When Tam Chung Fay, one of the applicants, arrived here in Los Angeles this year, did you recognize him as anyone you had seen before?

A. Yes.

Q. Whom did you recognize him to be?

A. I recognized him to be my son.

Q. Which son? A. The third son.

Q. When you left China in 1933, how old was Tam Fay Hing?

A. About 7.

Q. When the applicant in this case called Tam Fay Hing arrived in the United States this year,

(Testimony of Tam Dock Lung.)

did you recognize him as anyone you had seen before? A. I recognized him.

Q. Whom did you recognize him to be?

A. I recognized him to be my son. [33]

Q. Which son? A. The fourth son.

Q. I believe you stated when you left China in 1933, you left your son, the second son, third son, fourth son, fifth son, and the baby girl and your wife. After you left China in 1933, when did you next see your second son, Tam Hin Soon?

A. At the time Hin Soon came to the United States, C. R. 24, about the 10th month.

The Interpreter: C. R. 24, 10th month, that is 1935, and the tenth month would be from October 27, to the 31st, and November to the 25th.

Mr. Irwin: What is that, Chinese or English, please?

The Interpreter: The tenth month, he left from Hong Kong to come to the United States, C. R. 24. The tenth month covers October 27th to 31st, November 1 to November 25.

Mr. Irwin: What year?

The Interpreter: 1935.

Mr. Irwin: It is during that period he left Hong Kong.

Q. Did he arrive in the United States?

A. Yes.

Q. Where does he live today?

A. In Los Angeles.

Q. Is he in the building here? A. Yes.

Mr. Irwin: Your Honor, we have no picture.

(Testimony of Tam Dock Lung.)

May I ask the [34] bailiff to call to the door the gentleman I will designate as Tam Hin Soon?

The Court: Yes.

Q. (By Mr. Irwin): While we are waiting, how did your wife and children live when you were in the United States?

A. They lived together in the same house.

Mr. Irwin: May the record show a Chinese gentleman has come into the court room?

Q. Will you please tell us who this gentleman is?

A. This is my second son, Tam Hin Soon.

Mr. Irwin: Will you ask the gentleman to state his name?

The Interpreter: He says, "My name is Tam Hin Soon."

Mr. Irwin: May he be excused, your Honor?

The Court: You may return to the witness room.

Q. (By Mr. Irwin): Where did your wife and children get the money to live, money for food and so forth, when you were in the United States?

A. I sent home to them.

Q. Do you have with you at the present time any letters passing between your wife and yourself?

A. Not old letters, but some new letters.

Q. What happened to the old letters?

A. All burned.

Q. Where have you lived in the United States since you [35] came here in 1909? In how many places?

(Testimony of Tam Dock Lung.)

A. I have been moving about quite often. Sometimes several months.

Q. How many cities have you lived in?

A. I have lived in Chicago, Detroit, New York, North Carolina and Los Angeles.

Q. What kind of business have you been in since coming to the United States?

A. A cook for hotels and restaurants.

Q. Where do you now live?

A. I live at 639½ North Spring Street, Los Angeles, California.

Q. How long have you lived in Los Angeles?

A. Two or three years.

Q. How long have you lived in Southern California? A. Since I returned from China.

Q. The last time you returned from China was what year? A. C. R. 22-8-8.

The Interpreter: 1933, eighth month, eighth day, would be September 27th.

Mr. Irwin: I wanted to tie it up. Just the year is all I wanted. Your Honor, I believe Miss Martin and I previously stipulated that the American Consulate denied the application of the witness on the stand for a certificate to be issued for these two boys. [36]

Miss Martin: We will stipulate that the State Department has denied the two applicants or plaintiffs passports as American citizens on the ground that they are not American citizens.

Q. (By Mr. Irwin): Since being admitted to the United States in 1915 as an American citizen,

(Testimony of Tam Dock Lung.)

have you at all times maintained your citizenship?
I guess that is not in issue, I will withdraw that.

Mr. Irwin: I think we should ask the bailiff to bring in the two boys. Is that customary?

The Court: Yes, you can bring them in for the purpose of identification.

Mr. Irwin: Please bring in Tam Chung Fay and Tam Fay Hing.

May the record show two Chinese gentlemen have come into the court room?

Q. I am going to ask the witness if he knows these two gentlemen.

A. Tam Chung Fay and Tam Fay Hing.

Q. Will you please indicate which is the third and which is the fourth?

A. This is the third one and this is the fourth one.

Mr. Irwin: May the record show that the witness has identified the taller of the two gentlemen as Tam Chung Fay and the shorter as Tam Fay Hing? [37]

Q. Directing your attention to the gentlemen you have identified as Tam Chung Fay, how old was he when you last saw him in China? A. Nine.

Q. And you did not seem him from the time you left China in 1933 until he arrived in the United States this year, is that right?

A. That's right.

Mr. Irwin: I think we have had his testimony previously that he recognized him as the same boy. That's all for those two boys. Thank you.

(Testimony of Tam Doek Lung.)

Q. On your trips returning to China when you left the United States, where did you first land when you got to China?

A. Straight to my village.

Q. At what port did you land?

A. Hong Kong.

Q. Then how did you go from Hong Kong to your village? A. By boat.

Q. When you leave your village, can you take a bus part of the way?

The Court: Leave the village for where?

The Witness: Walking.

Mr. Irwin: The point is well taken, your Honor.

The Witness: By walking.

Q. (By Mr. Irwin): When you leave your village, if you [38] want to go to Hong Kong, what is the first stop you make after you leave your village?

A. Straight to the wharf, where you take the boat.

Q. Does that boat first go on a river, or does it go directly on the ocean?

A. It is a small sea, a small water, before you go to the big sea.

Q. Do you stay on that first boat, or do you change to a bigger boat?

A. To Macao, you change.

Q. Change to what? A bigger boat or smaller boat?

A. From Macao you take a larger steamer.

Q. Where did you go from there?

A. To Hong Kong.

(Testimony of Tam Dock Lung.)

The Court: How long does it take you to go from your village to the first boat?

The Witness: About three or four li distance.

The Court: Do you want?

The Witness: To the small boat, I mean.

The Court: Three or four what?

The Witness: Li.

The Court: How long does it take you to walk?

The Witness: It is not very definite. Sometimes slow and sometimes fast.

The Court: Half a day? A day? [39]

The Witness: From half an hour to three-quarters of an hour should make it.

The Court: Then you take the boat to Macao. How long does it take you on the boat to Macao?

The Witness: If you left daytime in the village, you sleep overnight and get there either midnight or early in the morning.

Q. (By Mr. Irwin): Get where?

A. To Macao.

Q. That is where you transfer to a bigger boat?

A. From the little boat, you stay overnight, if you left in the daytime, and maybe the next morning or late midnight, you get to Macao.

The Court: How long does it take you to go by boat from Macao to Hong Kong?

The Witness: Three to four hours.

The Court: Then it takes longer to go from the place you get on the small boat to Macao than it does to go from Macao to Hong Kong?

The Witness: Yes, it takes longer. In a small

(Testimony of Tam Dock Lung.)

boat, you have to stay overnight before you can get to the approach of the larger steamer.

The Court: How many times have you taken this trip from Macao to Hong Kong and Macao from Hong Kong?

The Witness: Many times. I can't remember. [40]

The Court: Your best recollection is it only takes you three hours to go from Macao to Hong Kong or from Hong Kong to Macao?

The Witness: About three or four hours.

Mr. Irwin: I believe that is all at this time, your Honor, for this witness. Shall I call the next witness?

Miss Martin: Ordinarily, your Honor, we defer cross-examination, but I am not sure there will be much cross-examination of this witness, so if you allow me to put a couple of questions now, it may save recalling him.

The Court: I have no objection.

Mr. Irwin: I have no objection.

Miss Martin: Before I start, I want to ask the interpreter to translate into the English date C. R. 20-5-26.

The Interpreter: C. R. 20-5-26 is 1931, July 11th.

Miss Martin: July 11?

The Interpreter: That's right.

Miss Martin: Then let me ask the witness a question.

(Testimony of Tam Dock Lung.)

Cross-Examination

By Miss Martin:

Q. Do you speak English?

A. Not very much.

Q. You understand some English, don't you?

A. Little bit, yes. [41]

Q. Do you understand the English calendar days and months? A. Yes.

Q. You understand that this is the month of December in the English calendar? A. Yes.

Q. You understand that there are 12 months in the English calendar year? A. Yes.

Q. You testified a while ago that on your third trip to China you arrived in October, 1930.

A. I said the 8th month on the 20th day I left San Francisco.

Miss Martin: What is the 8th month and the 20th day?

The Interpreter: Of 1930?

Miss Martin: Just translate into English the Chinese date.

The Interpreter: He testified C. R. 19-8-20 and that is translated October 11, 1930.

Miss Martin: Will you please translate the Chinese date he just gave of 8-20?

The Interpreter: I have to know the year.

Miss Martin: All right. Ask him.

The Interpreter: I just have the month and the date.

(Testimony of Tam Dock Lung.)

The Court: What year were you referring to when you said [42] 8-20?

The Witness: C. R. 19.

The Interpreter: That would be 1930. If it is the eighth month, it would be October 11, 1930.

Q. (By Miss Martin): You understand that your testimony then is that you arrived in China on your third trip in October, 1930.

Mr. Irwin: He said he left.

The Court: The question was when you returned, and it was not when he arrived.

Miss Martin: Ask him when he arrived in China. I don't mean to ask him that. I am saying to the judge what I had in mind. I am starting all over now.

Q. Is it your testimony that you left the United States on your third trip to China C. R. 19-8-20, or that you arrived in China on that date?

A. I left the United States on that date.

Q. So that in your understanding of the English calendar, your testimony is that you left the United States in October, 1930. A. Yes.

Q. Do you know the date when you arrived in China on your third trip?

A. On the ninth month, 13th day, I arrived at the Village. [43]

The Court: Will you translate that?

The Interpreter: November 3, 1930.

The Court: Arrived at the village.

Q. (By Miss Martin): You testified that your

(Testimony of Tam Dock Lung.)

No. 4 son was born, according to the English calendar, in March of 1931.

Mr. Irwin: I don't so understand.

Q. (By Miss Martin): How can you believe that that is your own son?

The Court: Something is wrong somewhere.

Mr. Irwin: Yes, there is.

Miss Martin: Let's have the witness answer the question.

Mr. Irwin: I object to that as argumentative.

Miss Martin: Is there any objection to the question?

Mr. Irwin: Yes.

Miss Martin: What is wrong with the question?

Mr. Irwin: You have the wrong date.

The Court: My recollection is he didn't say that, or my notes don't show he said that.

Miss Martin: Mine do, your Honor.

Mr. Irwin: That is why I am objecting.

The Court: My notes say he said his fourth son was born on C.R. 26-2-2.

Miss Martin: I am talking about the No. 5 son.

The Court: No. 5? [44]

Miss Martin: That's right.

The Court: No. 5, March 14, 1931.

Miss Martin: That's right.

The Court: Excuse me. That is his testimony.

Miss Martin: Will the reporter read the question? I will rephrase the question if I said No. 4.

Q. You testified your No. 5 son was born in the

(Testimony of Tam Dock Lung.)

English calendar year, March, 1931. How could you believe he was your son?

A. C.R. 20-1-26 is the date.

Mr. Irwin: Pardon me, your Honor, before we have the answer.

I will object to that as argumentative, because I call the court's attention to the fact that the record which we have admitted in evidence shows that he left the United States, August 30, 1930, and while it is true he has given the date of his departure as October, counsel kindly stipulated.

The Court: He has not only given the date as October 11th, but also he testifies now he arrived in the village C.R. 9-13, which is November.

Mr. Irwin: May it please your Honor, the previous stipulation shows these documents were signed by him at the time and they are authentic records.

The Court: The stipulation was not that everything in [45] the documents was true. It is that he made the documents. The government didn't stipulate to the truth.

Mr. Irwin: But this is a typewritten signature, and the document was prepared at the office of Immigration. It shows he departed August 30, 1930. It is true he said he left in October.

The Court: We don't have any record here of when he departed. We have the record of when he came back.

Mr. Irwin: I believe Plaintiffs' Exhibit No. 4 shows that, your Honor.

The Court: Where is the date?

(Testimony of Tam Dock Lung.)

Mr. Irwin: Dated August 30, 1930.

Miss Martin: That doesn't indicate the date of departure. That is the date of the application for departure.

Mr. Irwin: Government counsel, with the assistance of the representative from the State Department, has the original immigration file, and Plaintiffs' Exhibit 4, which your Honor has in front of you, is a copy which bears the date, August 27, 1930, but stamped on it, over the witness' signature, government counsel says she will stipulate, it shows that he actually departed on the President Jefferson on September 12, 1930.

Miss Martin: So stipulated.

The Court: Departed on September 12, 1930?

Mr. Irwin: Yes. [46]

The Court: All right.

Miss Martin: Now may we have the question read and answered?

The Court: May I ask this witness a question?

Miss Martin: Well, your Honor, we haven't had an answer to my question yet. Counsel was objecting to a question which hasn't been propounded to the witness, and it is a proper question.

The Court: You were predicating your question upon——

Miss Martin: It is a good question, regardless of the date.

Mr. Irwin: It is misleading, in view of the stipulation he left September 12th.

(Testimony of Tam Dock Lung.)

The Court: Start over and rephrase your question now.

Q. (By Miss Martin): My question was, you testified that your No. 5 son was born, according to the English calendar, in March, 1931. How was it possible for him to be your son?

A. I arrived 9-13.

The Court: You arrived on 9-13?

The Witness: Yes.

The Interpreter: I was looking at the 1930 calendar here. There is an extra sixth month here on the top, so when I was reading the eighth, there is one month difference there.

Miss Martin: Have you translated some dates erroneously?

The Court: You mean to say you haven't translated correctly? [47]

The Interpreter: I translated according to the reading of it, but because there are two sixth months of that particular year——

Miss Martin: What has that to do with this?

Mr. Irwin: Will you let the interpreter explain, please?

Miss Martin: No, I will not, because that is one of the objections I have on the question of an interpreter. They attempt to straighten out some factual matters which we are attempting to get from the witness, and I submit what the interpreter is talking about has no bearing on the matter, and she should not be testifying unless she has erroneously translated a date.

(Testimony of Tam Dock Lung.)

The Court: He testified his fifth son was born C.R. 20-1-26. When did you leave the United States for China on this trip, according to the Chinese calendar?

The Witness: Chinese eighth month, 20th day.

The Court: What year?

The Witness: C.R. 19.

The Court: I thought a moment ago you said you arrived in China C.R. 9-13.

Miss Martin: That is true. He is now testifying that 19-8-20 is when he left the United States. He has testified to that about three times.

Mr. Irwin: I object unless counsel attempts to qualify as [48] an expert in Chinese. I am sure I don't know what he said.

Miss Martin: I object to that, too, because that is what the interpreter said.

The Court: If both of you will keep quiet a minute, I will be able to find out what I am trying to find out.

Miss Martin: So was I, your Honor, and I feel I am being balked at asking the witness a question for which I had properly laid a foundation.

The Court: Let me ask this witness another question.

When did you leave the United States, on the Chinese calendar, for China on the trip we are talking about? When did you leave the United States?

The Witness: C.R. 19, eighth month, 20th day.

The Court: I don't want the interpretation now.

(Testimony of Tam Dock Lung.)

When did you arrive in the village on the Chinese calendar?

The Witness: C.R. 19, ninth month, 12th day, I arrived Hong Kong. The 13th day, I arrived at the village.

Miss Martin: Do you have the English translation of that?

The Court: Just a minute. Give me the Chinese date of the birth of the fifth son.

The Witness: C.R. 20, first month, 26th day.

The Court: Now, if you want to translate, you can translate these dates.

Miss Martin: Will the interpreter again translate C.R. [49] 20-1-26.

The Interpreter: March 14, 1931.

Miss Martin: Now will you translate C.R. 19-9-13?

The Interpreter: It could be October 4 or November 3. The reason for it is that when you read the Chinese calendar by the numerical month, there are two sixth months in this year.

Miss Martin: It could be either October 4th or November 3rd, 1930?

The Interpreter: Yes.

The Court: Now do you want C.R. 19-8-20?

Miss Martin: We had that translated.

The Court: Yes, two or three times.

Miss Martin: That's right. Why should I want it any more?

The Interpreter: I might also say, there is nothing I am changing, but there are two sixth

(Testimony of Tam Dock Lung.)

months of the year. It could be September 20th or October 20th.

Miss Martin: What could be September 20th or October 20th?

The Interpreter: I mean it could be September 12th or October 11th.

Miss Martin: What could be?

The Interpreter: The eighth and the 20th.

Miss Martin: C.R. 19-8-20? [50]

The Interpreter: It could be these two dates on account of the last year. I was reading the other months. When you folks were disputing, I just checked myself.

The Court: I notice it is 12:00 o'clock.

Miss Martin: May I ask the one question I have wanted to ask all morning?

The Court: Yes. You want to know how or why?

Miss Martin: That's right.

Q. How can you believe it is your son?

Mr. Irwin: I object to that as argumentative.

The Court: Overruled.

Mr. Irwin: Will your Honor hear me on that matter? On the corrected date, if he got there in October, it could be his son.

The Court: I thought there was some question as to the interpretation. I was perfectly willing to give this son the benefit of the doubt on the interpretation, and that is why I insisted upon getting the Chinese. According to the testimony with the Chinese calendar, it is only four months and 13 days.

(Testimony of Tam Dock Lung.)

Mr. Irwin: I understand there is a nine-month spread from my expert.

Miss Martin: I move to strike that statement from the record.

The Court: The argument of counsel is not evidence. [51] Now, you ask the question.

Q. (By Miss Martin): If you arrived in China, according to the English calendar, in October, how can you believe that the No. 5 son was your son?

A. He was born a six months baby.

Q. Are there any identifying marks such as a scar or other birthmark by which you could identify either your No. 3 or No. 4 sons?

A. The third one has no. The fourth son has.

Q. What identifying mark does he have?

A. On the back, there is a boil.

Q. Did the No. 4 son have such a mark when you last saw him in China?

A. I asked the doctor to take care of that for him.

Miss Martin: Will you please ask the question again?

The Witness: I was the one that asked the doctor to take care of it.

The Court: I am sorry, but we will have to recess now.

Miss Martin: I have concluded.

The Court: We will now recess until 2:00 o'clock this afternoon.

(Thereupon, a recess was taken to 2:00 [52] p.m.)

December 23, 1952—2:00 o'Clock, P.M.

Miss Martin: I have two more questions of this witness.

The Court: All right.

TAM DOCK LUNG

the witness on the stand at the time of recess, having been previously duly sworn, resumed the stand and testified, through the interpreter, further as follows:

Cross-Examination

(Continued)

By Miss Martin:

Q. I show you Exhibit 5 in evidence, which is a photostatic copy of the original document, and ask you if that is your signature at the bottom.

A. That is my name.

Q. Did you furnish the information to the Immigration and Naturalization Service for the material contained in that document which you signed?

A. I do not know what is stated therein.

Q. At the time that that form was filled out, were you asked questions by the Immigration Service and did you give the answers there?

A. Yes, a few questions were asked.

Miss Martin: I ask the interpreter if she will translate for us the date of the No. 5 on the form, C.R. 20-5-26. [53]

The Interpreter: July 11, 1931.

Miss Martin: May I put that on the back of this exhibit?

(Testimony of Tam Dock Lung.)

The Court: Yes, surely.

Mr. Irwin: That was going to be my one question, anyhow.

Miss Martin: July 11, 1931. I show that to your Honor.

Mr. Irwin: I was going to bring that same thing out, your Honor. I want to ask one or two questions in connection with it.

The Court: All right.

Redirect Examination

By Mr. Irwin:

Q. At the time you returned from China in 1933, was your recollection of events transpiring in 1931—withdraw that.

When you returned from China in 1933, was your recollection fresher as to events transpiring in 1931, than it is today? A. Now.

Mr. Irwin: You can see I didn't talk to him, your Honor.

The Witness: I am quite an aged person and sometimes my memory fails me.

Q. (By Mr. Irwin): Let me ask this question. At the time you returned from China in 1933, did you truthfully answer the questions put to you by the officials of the Immigration [54] Service?

A. Yes.

Q. At the time you returned, did you give them the names and ages of your five children?

A. I was a little confused at that time, perhaps, because my oldest son was born in January, and really the fifth son should be third month, 26.

Mr. Irwin: Nothing further.

The Court: Is there any dispute or does this change the testimony in any way as to when he arrived in the village? He has testified two or three times he arrived at the village C.R. 19-9-13.

Mr. Irwin: That is some time in October, as I understand it.

The Court: October 4th to November 3rd.

Mr. Irwin: There is no dispute about that. The dispute, as I understand it—we will see if we can agree on this. This morning I understood him to say the boy was born C.R. 20-1-26.

Was that his oral testimony?

Miss Martin: Yes.

Mr. Irwin: But when he testified to that, I noted and I was waiting to ask him on redirect, when he returned in 1933, he said the boy was born C.R. 20-5, which the interpreter has translated for us as being July 11, 1931. [55]

The Court: Any other questions?

Mr. Irwin: I have none, your Honor, unless the Court has some.

The Court: I haven't any.

Mr. Irwin: Tell him he may step down, and would you please call the second son?

The Court: Do you object to his staying in the room?

Mr. Irwin: I have no reason to ask him to remain.

The Court: Maybe he'd better leave the room then.

TAM HIN SOON

called as a witness herein by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified, through the interpreter, as follows:

The Clerk: Will you please state your name?

The Witness: Tam Hin Soon.

Direct Examination

By Mr. Irwin:

Q. Where do you live, please?

A. You mean my present residence?

Q. Yes.

A. 727 East Ninth Place, Los Angeles, California.

Q. When did you come to the United States?

A. C.R. 24.

The Interpreter: 1935 or early 1936. [56]

Q. Before coming to the United States, where was your home?

A. Toy Shan, Hoy Yin, Don Hong New Village.

Q. Who was your mother?

A. My mother's name is Fung Shee.

Q. With whom did you live in the new village when you were a boy? A. My mother.

Q. Who else?

A. When I was born, I lived with my brother at that home.

Q. Do you remember the first time you saw your father? A. About 10 years old.

Q. What do you remember about the first time you met your father?

(Testimony of Tam Hin Soon.)

A. I don't remember exactly how I met him.

Q. Who introduced you to your father?

A. My mother stated it.

Q. Where did you first see him?

A. When I came home into my house, in the living room my mother told me, "This is your father."

Q. Before that time, had you known any other man as your father? A. No.

Q. After your mother told you, "This is your father," [57] did he stay at your home for a while?

A. We lived together at home.

Q. While he was at home, were there any new babies in your family? A. Yes.

Q. How many?

A. At the time when I was 10?

Q. Yes. A. Two.

Q. What were they, boys or girls?

A. Two boys.

Q. Did those baby boys live? A. Yes.

Q. Did they grow up in your house?

A. Together, we lived there, together we grew up there.

Q. After these two babies were born, did your father leave for a while?

A. He came back to the United States.

The Court: Before you go any further, let's get the names of the babies.

Mr. Irwin: Thank you, your Honor.

Q. What were the names of these two baby boys that were born about the time you were 10?

(Testimony of Tam Hin Soon.)

A. One is Tam Chung Fay and one is Tam Fay Hing. [58]

The Court: And when were they born?

Q. (By Mr. Irwin): Do you know the birth date of your brothers? A. I remember some.

Q. What do you remember about it?

A. As far as I remember, C.R. 14-8-17 for Chung Fay and C.R. 16-2-2 for Fay Hing.

Q. Do you remember the dates yourself, or is that something your mother told you?

A. My father told me.

The Court: When did he tell you?

The Witness: When I was in China.

Q. (By Mr. Irwin): When these two baby boys were born, you said your father went back to the United States. Did your father come back to China on another trip?

The Court: Let's get him out of China before he comes back.

Mr. Irwin: I thought we did.

The Court: No. He said his father left. Let's get the date.

Q. (By Mr. Irwin): Do you know the date your father left China to return to the United States after your two baby brothers were born?

A. C.R. 16, he returned to the United States.

Q. Do you remember anything about his returning to the [59] United States, about when he left? Was there anything in particular that makes you think he left and came back to the United States?

A. You mean what he said to me when he left?

(Testimony of Tam Hin Soon.)

Q. No. When the father left in 1927, the two babies were small. He was 12 years of age——

The Court: May I suggest that you don't testify?

Mr. Irwin: Very well, your Honor.

The Court: May I ask a question?

Mr. Irwin: By all means.

The Court: You said you were 10 years old when your father came back to China. How old were you when your father left for the United States?

The Witness: About 13.

The Court: Your father remained in China on this trip about three years?

The Witness: About three years.

The Court: How old was the youngest boy, that is, the No. 4 boy, how old was he when your father returned to the United States?

The Witness: Just a few months old.

The Court: You may proceed.

Q. (By Mr. Irwin): Did your father come back to China again? A. Yes. [60]

Q. How old were you when he returned to China this time? A. About 16.

Q. Where were you living at the time your father came back?

A. I was living with my mother and my brothers in the same house.

The Court: What was the date when your father returned to China at this time?

The Witness: About C.R. 19.

(Testimony of Tam Hin Soon.)

Miss Martin: Translate it, please.

The Interpreter: 1930 or early 1931.

Q. (By Mr. Irwin): You say you were about 16 at that time. Did your father stay in China or did he go back again to the United States? When he arrived there in 1930, how long did your father stay?

A. About three years.

Q. During that time were there any children born?

A. You mean the 19th year, that trip?

Q. The time he came back in 1930, during that period of time were there any children born?

A. Yes.

Q. How many? A. Two.

Q. What were they? [61]

A. One son and one daughter.

Q. Who was the first baby born, a boy or a girl?

A. The boy first.

Q. Do you know of your own knowledge the day the boy was born, or is it something that your father or mother told you as to the date of his birth?

A. My father told me so.

The Court: When was your No. 5 brother born?

The Witness: According to my daddy's information to me, the third month, the 26th day, C.R. 20, third month, 26th day.

Mr. Irwin: When would that be in our calendar?

The Interpreter: May 13, 1931.

Q. (By Mr. Irwin): What was the name of the baby boy born at that time?

A. The boy's name is Tam Jing Hing.

The Court: Now, you say that you were about

(Testimony of Tam Hin Soon.)

19 when your father returned to China. How long after your father returned to China was the No. 5 boy born?

The Interpreter: I am giving him the English and he is trying to give Chinese dates.

Mr. Irwin: The Court is asking the question.

The Court: Can't you interpret the question? He doesn't need to have any English or Chinese dates. I am asking him how many months it was from the time the father arrived in the village until this boy was born? [62]

The Witness: I don't remember how many months exactly.

The Court: You were 19. Don't you remember the birth of your brother?

The Witness: Several months after my father returned.

The Court: Several months. Was it three, six, nine, twelve?

The Witness: About half a year or so.

The Court: Was there anything peculiar about this birth?

The Witness: I was told that the baby was very weak when he was born.

The Court: Was there anything peculiar about the No. 5 boy when he was born?

The Witness: No.

Mr. Irwin: Your Honor understands that this fifth boy is not one of the applicants.

The Court: He is not an applicant?

(Testimony of Tam Hin Soon.)

Mr. Irwin: No. It is an entirely collateral matter.

The Court: The applicants are the third and fourth boys?

Mr. Irwin: Yes, and we have no trouble on those dates.

The Court: Don't you have any personal recollection of when the No. 5 boy was born?

The Witness: I was told that the baby was very weak and constantly ill.

The Court: That surprises me. In these cases some of [63] the witnesses will remember very distinctly things that happened when they were eight or ten, and now this boy was 16 or 19 and he doesn't remember.

Mr. Irwin: With all deference to the court, I am a little doubtful about boys of six and seven giving you dates.

The Court: But when I deny an application, then you feel an injustice has been done.

Mr. Irwin: If I may submit, his statement there has a ring of sincerity. He was very weak and sick all the time, which goes to show he was a premature baby. The father said it was a six-months baby.

The Court: You can proceed.

Q. (By Mr. Irwin): You say this was in 1930. After the baby girl was born, was she the youngest one in the family?

A. Yes. The youngest one is the little girl, the sister.

Q. I better go back a moment to this fifth boy.

(Testimony of Tam Hin Soon.)

You were 19 when your father came back to China in 1930, is that your testimony?

A. The year when he went back to China, I was only 16.

Q. How old were you when he left in 1933?

A. 19.

Q. Do you remember when the fifth son was born? Do you remember anything about it right now? [64]

A. He was weak and they called a doctor.

Q. What I want to know is where were you when the baby was born? A. I was in China.

Q. Were you home when the fifth son was born?

A. I think I was at school.

Q. And where did you go to school?

A. I was studying at a school in the old village.

Q. How far was that from your new village where your home was?

A. 10 to 20 jongs. Not too far.

The Interpreter: 10 feet to a jong.

Q. (By Mr. Irwin): How many minutes did it take you to go from your house to school?

A. About two leters.

The Interpreter: That means in English about 10 minutes.

Q. (By Mr. Irwin): Do you remember when your father left for the United States, when your little sister was a baby?

A. After my youngest sister was born, my father came back to the United States.

Q. When your father left at that time, the last

(Testimony of Tam Hin Soon.)

time, for the United States, who was living at home?

A. My mother, Fung Shee—you mean the time when my father left for the United States the last time?

Q. The last time, yes. [65]

A. My mother, Fung Shee, Jing Hing, Chung Fay, Fay Hing, my sister and myself.

Q. At the time your father left for the United States the last time, how old was Tam Chung Fay?

A. About nine.

Q. How old was Tam Fay Hing?

A. About seven.

The Court: When did your father leave for the United States the last time, what date?

The Witness: C.R. 22, about the eighth month.

The Interpreter: 1933. The eighth month would be September or October.

Q. (By Mr. Irwin): When your father left in 1927 when the third boy and fourth boy were little boys, was there any other man living at your house from that time until the time your father came back in 1930? A. No.

Q. You came to the United States when?

A. C.R. 24.

The Interpreter: 1935 or early 1936. It is 1935.

Q. (By Mr. Irwin): How did you travel from your village to the United States?

A. I walked to the wharf and took the boat.

Q. Is there any name for this place where the wharf is? [66] A. Wan Dew.

(Testimony of Tam Hin Soon.)

Q. That is where the wharf is?

A. That is where the tender brings you to the steamer, but it is not a regular wharf, not a modern wharf.

Q. At the time you left China, did you see the third brother or the fourth brother until they came to the United States? A. Yes.

Q. Where? A. At my home.

Q. I don't think you understand. After you left China, did you ever see your third or fourth brothers again until they came to the United States?

A. Yes. I haven't seen them.

Q. Do I understand that you lived all the time from the time you were a small boy until you left to come to the United States, at home?

A. Yes.

Q. At the time you left, you had known Tam Chung Fay since he was a baby?

A. Yes, from childhood.

Q. He was raised in the house with you?

A. Same house.

Q. And was the same thing true as to Tam Fay Hing?

A. Grew up together. We lived in the same home together [67]

Q. As the older brother, did you have anything to do with them as they were growing up?

A. I am older than they are and they are part of my family and my younger brothers.

Q. I show the witness—I believe this is for identification, but I will offer it in a moment—

(Testimony of Tam Hin Soon.)

Plaintiffs' Exhibit 6 for identification, and ask if you can tell me who those people are there.

A. In the middle sitting is my mother, Fung Shee. Chung Fay is right behind her.

Q. Is that a brother of yours?

A. Yes, my brother.

Q. Which one?

A. The third brother. On the right side as I am sitting now is Fay Hing, my other brother.

Q. The young girl in the picture, have you ever seen her? A. When I was in China.

Q. Someone told you who that girl is?

A. Yes. My brothers now told me this is our sister. Tam Mow Don is the name.

Q. The lady you point out as your mother, does she look the way she did when you left China in 1935? A. Much older than she was. [68]

Q. The picture is much older than she was?

A. Yes.

Q. The two boys you have identified as your brothers, are they older in the picture than they were when you left them in China?

A. They are older now.

Q. But are you able to recognize, not from what someone else told you, those two young men in the picture as the two boys you knew as your brothers when you left in 1935?

A. When I look at the picture, the face and the expression is the same as when they were young.

Q. How old was No. 3 brother when you came to the United States? A. About 11.

(Testimony of Tam Hin Soon.)

Q. And No. 4 brother? A. About 9.

Mr. Irwin: May I offer Plaintiffs' Exhibit 6 for identification, your Honor, at this time?

The Court: It may be received.

The Clerk: Exhibit 6 in evidence.

(The photograph referred to was received in evidence as Plaintiffs' Exhibit No. 6.)

Mr. Irwin: May I ask if the bailiff will bring the two applicants in for identification purposes?

The Court: All right. Will you bring them [69] in?

Q. (By Mr. Irwin): While we are waiting, I might ask this question. There was a No. 1 brother, wasn't there? A. Yes. He is dead.

Q. Where did he die, do you know?

A. Shanghai.

Q. This No. 5 brother we have been having the trouble about, where is he, if you know?

A. Studying in Canton, China.

Mr. Irwin: Let the record show two Chinese gentlemen have entered the room. I will now ask the witness about them.

Q. Do you know the two gentlemen that just came in the room?

A. Chung Fay, my third brother, and my No. 4 brother, Fay Hing, over there.

Q. Are they the men that you knew as boys who lived in your home with you up until the time you left for the United States? A. Yes.

Q. You knew them since they were babies?

(Testimony of Tam Hin Soon.)

A. From the time of their birth until we grew up, we were together in the same home.

Q. With the same mother?

A. The same mother.

Q. And the same father, as far as you know?

A. Yes, all the same together. [70]

The Court: Now, will the witness get over there and stand between the two boys?

Mr. Irwin: Yes, certainly. Ask him to step down. Your Honor, you might look at the photograph, too, because there is a distinct difference between the mother and the alleged father here.

The Court: All right.

Mr. Irwin: The younger boys can go out now. I wonder, though, if we could call them back with the father and have the four of them stand there with the picture.

The Court: Yes.

Mr. Irwin: I will do the running out for them and save the bailiff the time.

Will you ask the witness to step down, and then your Honor can look at them all together, the four of them.

(Witness complying.)

Mr. Irwin: I have no further questions.

Miss Martin: I would like to defer cross-examination.

The Court: All right. Which one do you want next?

Mr. Irwin: No. 3 next, your Honor. [71]

TAM CHUNG FAY

called as a witness by and on behalf of the plaintiffs herein, having been first duly sworn, was examined and testified, through the interpreter, as follows:

The Clerk: Will you please state your name?

The Witness: Tam Chung Fay.

Direct Examination

By Mr. Irwin:

Q. Where did you live in China before coming to the United States?

A. I was living at Don Hong New Village.

Q. With whom did you live?

A. With my mother, my third, my fourth—I mean the third, the fourth, the fifth brother, and a younger sister and my mother.

Q. Did you have a No. 2 brother?

A. Before he came to the United States, he was living with us, also.

Q. Do you remember when your No. 2 brother left for the United States? A. About C.R. 24.

Q. Do you remember anything about his leaving?

Miss Martin: Pardon me. What is the translation of the date? [72]

Mr. Irwin: Excuse me.

The Interpreter: 1935 or early 1936.

Q. (By Mr. Irwin): Do they do anything when a member of the family leaves? Is there anything about the No. 2 brother leaving that you remember?

A. My mother went and bought some pork and we ate a dinner together.

(Testimony of Tam Chung Fay.)

Q. How old were you when you first met the man you believe to be your father?

A. After I was born.

Q. Do you know when you were born? You have not been told when you were born, or have you?

A. My mother told me.

Q. What did your mother tell you?

A. My mother told me I was born C. R. 14, eighth month, 17th day.

The Interpreter: October 4, 1925.

Q. (By Mr. Irwin): How old were you when you first remember seeing your father?

A. When I was born, my father was home and then naturally I see my father.

The Court: Do you remember seeing your father when you were a little baby?

The Witness: The third time when he returned to the village home. [73]

Q. (By Mr. Irwin): When was that?

A. I think it was C. R. 19.

The Court: How old were you then?

The Witness: About six.

Q. (By Mr. Irwin): What do you remember about your father coming home?

A. Not very clearly.

Q. Do you remember your father leaving again to come to the United States?

A. I knew that he was coming back to the United States.

Q. Did he go? Did he leave? A. Yes.

The Court: How old were you when he left?

(Testimony of Tam Chung Fay.)

The Witness: Nine.

Q. (By Mr. Irwin): Did you ever see your father from that time until you came to the United States? A. Yes.

Q. Where? A. At the airport, to meet me.

Q. Do you mean the airport where you landed in the United States? A. Yes.

Q. Had you seen him between the time he left when you were nine and the time you arrived at the airport here? A. No. [74]

Q. Did you have any younger brothers or sisters? Pardon me. How old is your No. 4 brother?

A. 26.

Q. How much younger is he than you?

A. Two years.

Q. Do you have any brothers and sisters younger than your No. 4 brother?

A. No. 5 brother, Jing Hing, and one more younger sister, Tam Mow Don.

Q. How old is your No. 5 brother?

A. About 22 now.

Q. How old are you? A. I am 28.

The Court: You say you are 28. Your No. 4 is 26 and No. 5 is 22. Is that right?

The Witness: Yes.

Q. (By Mr. Irwin): When you left China, who was still at home with your mother?

A. My fifth brother and youngest sister.

Q. Do you know where your fifth brother is now?

A. Studying in Canton, China.

(Testimony of Tam Chung Fay.)

Mr. Irwin: May I have the photograph again, please, your Honor?

Q. Will you please show the witness Plaintiff's Exhibit 6 and ask him to tell us who the people are in that picture. [75]

A. The central one sitting is my mother. The one standing behind her is I. On my left standing is the fourth brother, and the one on my right standing is Tam Mow Don, younger sister.

The Court: Well, it's 3:00 o'clock now. We will take a recess until 10 minutes after 3:00.

(Recess.)

Q. (By Mr. Irwin): At the time you left China to come to the United States, how did you go from your home to Hong Kong?

A. From the village, I walked to Won Dew, the waterfront there.

Q. Did anybody go with you from the village?

A. My fourth brother, Fay Hing, and myself.

Q. Walked to the waterfront? A. Yes.

Q. What did you do when you got to the waterfront?

A. From the village, we walked to this waterfront, Wan Dew, and there we have a small wooden boat that takes us out to the sea, a little boat, and then we got on the bigger steamer.

Q. Did you both get on the boat at the waterfront? A. Together.

Q. Did you both go on this boat to the bigger boat? A. Together. [76]

(Testimony of Tam Chung Fay.)

Q. When you got to Hong Kong, where did you go?

The Court: Let's get him over to Hong Kong first.

Mr. Irwin: All right.

The Court: When you got on the boat, where did you go first?

The Witness: From Kong Moon to Macao and Macao to Hong Kong.

The Court: How long did it take you to go over to Macao?

The Witness: We left the first month, the 15th day in the afternoon, from the village, and arrived in Hong Kong the 17th day in the early morning, before noon.

The Court: Let's go back. How long did it take you to go in this small boat to Macao?

The Witness: About half an hour from the little tender to the big ship.

The Court: In the big ship to Macao, how long did it take?

The Witness: Well, through the night.

The Court: What time of the day did you arrive at Macao?

The Witness: Afternoon.

The Court: Then you were on the boat all through the night and landed the next afternoon, is that correct?

The Witness: From the village, we left and we took the little boat to the dock to get on the big

(Testimony of Tam Chung Fay.)

ship, and from the [77] big ship about seven or eight hours.

The Court: Were you on the big boat seven or eight hours before you got to Macao?

The Witness: That's right.

The Court: How long did it take you to go from Macao to Hong Kong?

The Witness: Three or four hours.

The Court: Three or four hours. What time did you leave Macao?

The Witness: We arrived at the big boat at night and that sail at dark, in the evening.

The Court: What time did you get to Hong Kong?

The Witness: The movement of the ship is about three or four hours, but we spent so many hours on the boat to get there, to Hong Kong.

The Court: You left Macao at dark. What time did you get at Macao? Did you get to Macao before midnight or the next morning after daylight?

The Witness: It is night time.

The Court: Do you know what time it was when you arrived at Hong Kong?

The Witness: Early in the morning.

The Court: All right.

Mr. Irwin: Let me go back over it a little bit now.

Q. You left your home in the new village what time of [78] the day?

A. About 2:00 p.m. in the afternoon.

Q. When you got to the wharf, how long did

(Testimony of Tam Chung Fay.)

you have to wait for the little boat to take you out to the bigger boat?

A. About three something when we get to the big boat.

Q. When you got to the big boat at the wharf, how long were you there before the big boat started out for Macao?

A. The moment we got on, left the small boat to the big boat, we sailed.

Q. For Macao?

A. To Kong Moon first. From Kong Moon to Macao.

Q. Is Kong Moon the same place as the wharf?

The Interpreter: It is a little town.

Mr. Irwin: Ask him, if you will, please.

The Witness: Kong Moon is the name of a place.

Q. (By Mr. Irwin): Is it a place where the boat started from to go to Macao or is it a place it stopped on the way to Macao?

A. It is a place you pass before you go to Macao.

Q. From the time the boat started to the wharf to go to Macao, how many hours was the boat moving to get to Macao?

The Interpreter: The big boat?

Q. (By Mr. Irwin): The tender takes them to the big boat and the big boat takes them to Macao and they change to another boat that took them to Macao, is that right? [79]

A. That's right, three boats.

Q. We get him from the tender to the first boat.

(Testimony of Tam Chung Fay.)

When did that boat start? He said it started about 3:20 in the afternoon. How long did it take to get to Macao?

A. To Macao, seven, eight hours.

Q. Then when they got to Macao it was night, was it? A. Yes.

Q. Did you stay on that boat the rest of the night, or did you get right off of it in the middle of the night?

A. We transferred to the third ship.

Q. How long did you stay on the big ship before the sailing for Hong Kong? A. Until night.

Q. What? A. Until evening.

Q. Then you left the wharf 3:20 in the afternoon?

A. At 3:00 something, I was on the second boat.

Q. And did it leave at 3:00 something for Macao?

A. Yes. It sailed after we arrived there.

Q. Do I understand they were sailing about seven hours before they got to Macao?

A. Near morning before we got to Kong Moon.

Q. Did it stop on the way?

A. Not until we got to Kong Moon.

Q. Where is Kong Moon? Is that on the way to Macao? [80] A. Yes, on its way.

The Court: To go to Kong Moon, you go there after you leave Macao?

The Witness: No, on the way.

Mr. Irwin: If your Honor will indulge me, this is what I have been advised. Before the war, the

(Testimony of Tam Chung Fay.)

old gentleman's last trip was 1933, the boats used to sail from the wharf directly across the ocean to Macao. Since the war, there is a smaller boat. It goes closer to the shore. It goes up and stops at Kong Moon, and then goes on to Macao. In other words, it travels a different route than it did when the father last made the trip.

Miss Martin: Who advised you of that?

Mr. Irwin: This gentleman here, who has been to Hong Kong. He doesn't speak English.

The Court: Have they changed the route to Hong Kong from Macao?

Mr. Irwin: No, that is the same. He gives three or four hours, which is the same as the father testified.

Miss Martin: I have no knowledge about any of this, but if we have a witness who can tell us what the facts are——

Mr. Irwin: He has testified to the sailing time.

Miss Martin: I don't stipulate to Mr. Irwin's statement.

The Court: Suppose we go ahead.

Mr. Irwin: Let's try again. [81]

Q. Let's sail from the wharf and have him tell us exactly what the boat did when it left the wharf. We already know we took a tender out to the boat. They are on this boat taking off for Macao. Where did the boat go? How long did it take? Where did it stop? Tell us everything.

A. From Wan Dew wharf, we took off at about 3:00 in the afternoon. We take the steamer to Kong

(Testimony of Tam Chung Fay.)

Moon. We arrive there the next early morning. There we took another ship and we arrive at Macao by dark.

The Court: Then you took three big boats?

The Witness: All the way to Hong Kong, we took three steamers and one little tender.

Q. (By Mr. Irwin): From the wharf, where was the first stop where they changed boats?

A. It is Wan Dew, about 3:00 o'clock there, we took a steamer to Kong Moon.

Q. What time did you get to Kong Moon?

A. There we took another ship to Macao.

Q. How long did they wait at Kong Moon before the other ship took off for Macao?

A. Right after we arrived there, we transferred to the other boat.

Q. Did it sail right away?

A. Yes, it sailed.

Q. When did it get to Macao? [82]

A. In the evening.

Q. They transferred then to another boat?

A. Transferred to a larger steamer from there.

Q. Let's stop right there. They transferred to the larger steamer. Did they sail right away or did it wait a while?

A. Waiting. We had some waiting. Waited to dark before sailing.

Q. How long was this steamer moving before you got to Hong Kong?

A. Three or four hours.

Q. Who was with you?

(Testimony of Tam Chung Fay.)

A. Myself and my fourth brother.

Q. When you got to Hong Kong, where did you go?

A. A hotel called Eastern.

Q. Did you stay at that hotel all the time you were in Hong Kong?

A. I didn't stay there continuously.

Q. Where else did you stay?

A. Shum Sui Po, 30 San Ning Road.

Q. Is that a camp or a hotel or what?

A. It is a building.

Q. Is that the street that had the hotel?

A. It is another place. [83]

Q. Did you stay there then until you left?

A. It was like this. First we went to the Eastern Hotel or Dung Fong Hotel. Then the second move was to Shum Sui Po where the wooden houses were.

The Court: The what?

The Witness: Wooden houses.

The Interpreter: I think it is a camp.

The Witness: Number three was to No. 30 San Ning Road in the area of Shum Sui Po. [84]

Q. (By Mr. Irwin): When they moved from the hotel to where the wooden houses were, did they still go back to the hotel to get their mail?

A. One time we went back to the hotel to get our mail, and later on, when we moved to 30 San Ning Road, we went to a store to get our mail; Lum Hing Sing, another store where we got our mail.

Q. You have come through that door two or

(Testimony of Tam Chung Fay.)

three times today with another man shorter than you. Who is that man?

A. My fourth brother, Tam Fay Hing.

Q. By the way, did you and your brother go to school in China? A. Yes.

Q. Did you go to the same school?

A. Same school.

Q. Were you in different classes?

A. Not the first year I went to school but the latter years we were in the same class.

Mr. Irwin: Nothing further.

Miss Martin: I will defer cross-examination.

(Witness withdrawn.)

The Court: Call the other brother. [85]

TAM FAY HING

called as a witness by and on behalf of the plaintiffs herein, having been first duly sworn, was examined and testified, through the interpreter, as follows:

The Clerk: State your name, please.

The Witness: Tam Fay Hing.

Direct Examination

By Mr. Irwin:

Q. Where did you live before you came to the United States?

A. I was living at Toy Shan, Hay Yin, Don Hong Village.

Q. With whom were you living?

(Testimony of Tam Fay Hing.)

A. Mother, my second brother, my third brother, my first brother, my younger sister.

Q. Did your second brother leave China before you did? A. He came sooner.

Q. Do you remember when your second brother left China? A. About C.R. 24.

The Interpreter: 1935 or early 1936.

Q. (By Mr. Irwin): When were you born, if you know? A. I was born C.R. 16-2-2.

Miss Martin: Stipulate that is March 5, [86] 1927.

Mr. Irwin: I think it might be helpful if we trace the route now and then tomorrow morning I would like to go back a little way. Your Honor has shown interest in this course of travel and it is a little out of order, but I would like to take the route right now.

The Court: I would like to finish the direct examination tonight.

Q. (By Mr. Irwin): Did the man whom you knew as your father live with you any of the time you were in China? A. Yes.

Q. How long did he live with you?

A. Three or four years.

Q. Do you remember when he left China?

A. About C.R. 22.

The Interpreter: 1933 or early 1934.

The Court: How old were you when your father left China?

The Witness: Six or seven years old.

Q. (By Mr. Irwin): Did you ever see your

(Testimony of Tam Fay Hing.)

father after he left China in 1933 or early 1934 until you came to the United States?

A. I saw him here after my arrival.

Q. That was the first time you saw him after he left when you were six or seven years of age?

A. That is the fact.

Q. Did you go to school in China? [87]

A. Yes.

Q. Where was the school?

A. In the old village, Don Hong Old Village.

Q. And you lived where?

A. We lived at Don Hong New Village.

Q. How far was it from your home to your school? A. About 20 jongs.

Q. About how much in time?

A. It depends on how fast you walk. It takes about 10 minutes or 10 to 15 minutes. There is no set time it takes to get there.

Q. I show you Plaintiffs' Exhibit 6 in evidence and will you identify the people there?

A. The middle sitting is my mother Fung Shee. On the right facing me as I look at it is myself. The middle one behind my mother is Tam Chung Fay, my third brother. The left side is my younger sister, Tam Mow Don.

Q. How much older are you than your younger sister?

A. She is 21 this year. About five years.

Q. Do you know when she was born?

A. C.R. 21.

The Interpreter: 1932 or early 1933.

(Testimony of Tam Fay Hing.)

Q. (By Mr. Irwin): Do you remember the event itself, the fact of a baby girl being born? Were you old enough to remember? [88]

A. Yes, I kind of remember.

Q. The girl that you have pointed out in Exhibit No. 6, how far back do you remember her?

A. From the time of her birth until now, I know her.

Q. Did she always live in your home from the time you can remember?

A. Yes. We lived in the same home.

Q. By the way, since you are in the picture, where was the picture taken?

A. In Hong Kong.

The Court: When?

Mr. Irwin: I was going to put it with reference to the departure, your Honor.

Q. How long before you left Hong Kong for the United States was that picture taken?

A. At the time when my mother came up to Hong Kong, we took it. I can't remember the date.

Q. Had you ever been to Hong Kong more than once? A. Never.

Q. How long were you in Hong Kong from the time you arrived until you left for the United States?

A. Over two years. You mean leaving in Hong Kong?

Q. That's right. A. Over two years.

Q. Do you remember when you left your village to go to [89] Hong Kong?

(Testimony of Tam Fay Hing.)

A. Yes, I remember some.

Q. What time of the day did you leave your village and where did you go? How did you go to Hong Kong?

A. C.R. 39, the first month, 15th day, I left the village to go to Hong Kong. On the 17th day, I arrived there.

Q. Was that a two-day span?

The Interpreter: Two days' time.

Q. (By Mr. Irwin): What time of the day did you leave your village?

A. About 2:00 p.m., we left the village.

Q. Did you ride or walk to where you took the boat?

A. I walked to the place where I took the boat.

Q. Who was with you?

A. My third brother was with me.

Q. When you got to the place you took the boat, what did you do? When you got to the place where you take the boat, where did you first go on the boat?

A. Took a little boat to the big ship, and then to Kong Moon, and then to Macao, and then Hong Kong.

Q. At the time you took the little boat after the first big ship, did the first big ship leave right away?

A. Not very much longer, the boat was sailing.

Q. You first went where, did you say?

A. Kong Moon. [90]

Q. What did the boat do when it got to Kong

(Testimony of Tam Fay Hing.)

Moon? A. We transferred to another boat.

Q. Where did it go? A. To Macao.

Q. From the time you left the wharf in the afternoon, what time was it you got to Macao?

A. Two days, two nights. About, according to my figuring, two nights and two days.

Q. You first told us it took two days to get to Hong Kong.

A. It is two from the time from the village.

Q. That isn't what I want to know. From the time you got on the boat at the wharf, when the little boat takes you to the first big boat, how long did it take the first big boat to get to Macao?

A. About seven or eight hours, approximately seven or eight hours.

Q. That is to Macao? A. Yes.

Q. Now, did the boat, when it got to Macao, how long did they stay there before they left for Hong Kong?

A. Some time midnight, night time, before we left.

The Court: Before we leave this, what time of the day was it you arrived at Macao?

The Witness: In the morning, forenoon. [91]

The Court: You left the village at 2:00 o'clock in the afternoon the day before and you arrived at Macao the next morning, is that right?

The Witness: Yes. The next morning we arrived at Kong Moon.

Mr. Irwin: I thought we were at Macao.

The Court: Will you listen to my question and

(Testimony of Tam Fay Hing.)

try to ask him just this question. You left the village at 2:00 o'clock in the afternoon. What time the next morning did you arrive at Macao?

The Witness: Over 10 hours.

The Court: You left at 2:00 o'clock in the afternoon. You mean to say you arrived at Macao 10 hours later?

The Witness: I am speaking of arriving at Kong Moon.

The Court: I am asking you about Macao. Do you know where Macao is?

The Witness: About 20, I presume a day and a half.

The Court: What time of the day did you arrive at Macao?

The Witness: About noon time.

The Court: A little while ago you said it was forenoon.

The Witness: I think it is more noon time.

The Court: It was not in the afternoon?

The Witness: I really don't remember very clearly whether it is the forenoon or noon time. [92]

Mr. Irwin: I think I can perhaps ask him this.

Q. Had you ever made this trip before?

A. I have never been there before.

The Court: I understood he only made the one trip.

Mr. Irwin: Maybe these names are throwing him.

The Court: All right.

Q. (By Mr. Irwin): You walked from your

(Testimony of Tam Fay Hing.)

village to the wharf, is that correct? A. Yes.

Q. Took a little boat to a bigger boat. To a bigger boat out from where the wharf was, is that right? A. Yes.

Q. That boat sailed? A. Yes.

Q. How many hours did it sail before it stopped the first time? A. I don't understand.

Q. The boat started. This is the first big boat. It starts. You and your brother are on the boat.

A. Yes.

Q. When did you get off of that boat?

A. Not very long.

Q. What did you do when you got there?

The Court: What do you mean by "there"?

Q. (By Mr. Irwin): Do you know the name of the place the [93] first boat stopped at?

A. Kong Moon.

Q. How long did it take you to get to Kong Moon from the time you left the wharf?

A. I can't tell you how many hours it took.

Q. Did you go to sleep?

A. Overnight I was on the boat.

Q. So that from the wharf to Kong Moon was overnight? A. Yes.

Q. Was the sun up high when you go to Kong Moon or was it just coming up?

A. About 7:00 or 8:00 o'clock in the morning. You mean to Kong Moon?

Q. Yes. Would that be the first stop the boat made? A. Right.

(Testimony of Tam Fay Hing.)

Q. That is 7:00 or 8:00 o'clock the next morning, is that right?

A. Yes, about 7:00 or 8:00 o'clock. I am not too sure.

Q. How did you go on to Macao? On the same boat or another boat?

A. We changed to another ship to go to Macao.

Q. Did you have to wait a while for that ship to leave for Macao or did it leave right away?

A. There was a little waiting there.

Q. About what time of the day did you leave Kong Moon? [94]

A. The ship sail after we got transferred to the boat. It was evening time.

Q. They arrived at 7:00 or 8:00 in the morning and a short time later, evening time, they left for Macao?

A. I am not sure. I think it is 7:00 or 8:00, or 8:00 or 9:00 o'clock, I arrive at Kong Moon, and we got on another steamer and head to Macao.

Q. What time of the day or night did you get to Macao? A. Early in the morning.

Q. What did you do when you got to Macao about going to Hong Kong?

A. We transferred to another steamer to go to Hong Kong.

Q. When did they get there?

A. I arrived C.R. 39, the first month and the 17th day at Hong Kong.

Q. What the judge wants to know is how long did it take the boat to go from Macao to Hong

(Testimony of Tam Fay Hing.)

Kong? A. Three or four hours.

The Court: What time did you arrive at Hong Kong?

The Witness: I don't know the exact hour, but it was in the morning. It was in the forenoon some time.

Q. (By Mr. Irwin): Let's see if I have got the testimony now. From the wharf to Kong Moon, you left about 3:00 o'clock in the afternoon, is that right? [95] A. Yes.

Q. You got to Kong Moon 7:00 or 8:00 o'clock the next morning? A. Yes.

Q. You transferred to another boat at Kong Moon. A. Yes.

Q. You waited a little while and then the boat left for Macao, is that right? A. Yes.

Q. When did the boat get to Macao?

A. Evening.

Q. Then how long did you wait in Macao before the boat sailed for Hong Kong?

A. About midnight, some time around midnight.

Q. When it left? A. Yes.

Q. Do I understand you arrived at Hong Kong in the early morning? A. Yes.

The Court: He said before he arrived in the morning. Now you say early morning. Do you know what time it was you arrived in Hong Kong?

The Witness: I don't remember the hour, but I know it was in the morning some time.

The Court: Was it daylight? [96]

The Witness: Yes.

(Testimony of Tam Fay Hing.)

The Court: Was the sun up?

The Witness: That I don't remember.

Miss Martin: Now, may we ask the witness at this point how many hours it took?

The Court: He has testified three or four hours from Macao to Hong Kong.

Mr. Irwin: They have all said that.

The Court: He testified three or four hours.

Mr. Irwin: What time of the year was this, please? What was the day? What would that be in our calendar?

Miss Martin: I don't recall this witness stating that, your Honor.

The Court: I have got it down here.

Miss Martin: This very witness in hours from Macao to Hong Kong?

Mr. Irwin: I have written it down.

Miss Martin: All right.

Mr. Irwin: Can you give us the date on the calendar when he arrived at Hong Kong?

The Interpreter: Yes. Just a moment. About March 5, 1950.

The Court: Was this the first time you were on a big boat like this?

The Witness: My first trip. [97]

Mr. Irwin: Would your Honor permit me to ask the witness to draw his itinerary as best he can from the village to the wharf, to the dock?

The Court: If he can draw it.

Mr. Irwin: Ask him if he can start from his

(Testimony of Tam Fay Hing.)

village and show us the route and the stops, where they changed the boats, and everything.

The Witness: I don't know how to sketch.

Mr. Irwin: That answers that.

The Court: I notice it is 15 minutes after 4:00. Are you going to finish with this witness?

Mr. Irwin. Well, your Honor, I have done the best I can. I think I have. Might I go over my notes?

The Court: Well, maybe we'd better take a recess, and if you want to, you can call him back in the morning.

Mr. Irwin: Yes, your Honor. I want to see if finally I have got it all in.

The Court: We will stand in recess until 10:00 o'clock in the morning.

Mr. Irwin: I have one other witness, a man who made this trip before the war and since the war.

The Court: I would like to have somebody who can tell about this, because the testimony we have had before is it is an overnight trip from Macao to Hong Kong. These witnesses say it is three or four hours. Other witnesses testified they [98] have been on the boat overnight. Of course, that is the evidence in this case.

We will stand in recess until 10:00 o'clock tomorrow morning.

(Thereupon, a recess was taken to 10:00 a.m., Wednesday, December 24, 1952.) [99]

December 24, 1952, 10:00 A.M.

The Court: You may proceed.

Mr. Irwin: Your Honor, may I make a brief statement to the court? I always recognize first the responsibility of my duty to the court. I was having great difficulty with this witness yesterday and I wanted the court to know I had not talked to the witness last night through an interpreter or otherwise. Your Honor realizes the handicaps, the difficulties where the locale is different, and in this instance we have to take what is given through the interpreter.

The Court: Just think what the problem is to the court.

Mr. Irwin: I sympathize with the court. I want to say the questions I am going to propound now were handed to me by this American Chinese interpreter who says I was not interrogating the people literally enough. These few questions have been suggested to me and I am adopting them and propounding them now, so let's see what they bring out.

The Court: May I ask the interpreter a question? Did you find any problem relative to understanding the dialect of the witness?

The Interpreter: It is not the dialect. He doesn't give a direct answer.

The Court: What is the dialect?

The Interpreter: See Yip, one of the Toy Shan dialects. [101]

The Court: He is speaking the same kind of

dialect most of the other witnesses have been talking?

The Interpreter: Yes.

The Court: As far as I can recall, we have never had an applicant that didn't come from this particular locality. China is a big country, but they have all been from Toy Shan. I don't know why, but they have all been from there. Are you having any difficulty?

The Interpreter: No. It is just the answers.

The Court: Does he understand what you say?

The Interpreter: I think he does, but instead of giving a direct answer, as the court would like, he tries to say something else.

The Court: Do you have any trouble understanding what he says?

The Interpreter: No, excepting that what he said, I told yesterday verbatim.

The Court: Is there any difference in dialect between any of these witnesses? Did the father and the two boys speak exactly the same sort of dialect?

The Interpreter: Yes. But the others are more intelligent in answering. That is the trouble I had yesterday.

The Court: I just wanted to know if you had any dialect trouble.

The Interpreter: No. [102]

The Court: All right. You can proceed.

Mr. Irwin: The first few questions may be repetitious and I ask the court and counsel's indulgence.

TAM FAY HING

the witness on the stand at the time of adjournment, having been heretofore duly sworn, was examined and testified further, through the interpreter, as follows:

Direct Examination
(Continued)

By Mr. Irwin:

Q. Will you tell us again when you left your village for Hong Kong? A. C.R. 19.

Mr. Irwin: That is what in English, please?

The Interpreter: 1930 or early 1931.

Mr. Irwin: I asked him when he left the village, not when he was born.

The Witness: C.R. 19, first month, 15th day.

The Court: Let me ask this. Ask him again. When did you leave your village to go to Hong Kong to come to the United States?

The Witness: C.R. 39, first month, 15th day.

Mr. Irwin: What year is that?

The Interpreter: C.R. 39. 1950.

Mr. Irwin: What is the rest of it? [103]

The Court: Can't you translate the first month and 15th day?

The Interpreter: I have to make sure, because he doesn't speak very clearly.

The Court: You just said he said 1-15.

The Interpreter: March 3rd.

Q. (By Mr. Irwin): When did he arrive at Hong Kong? A. C.R. 39, 1, 17.

Mr. Irwin: That's when?

(Testimony of Tam Fay Hing.)

The Interpreter: March 5 of the same year.

Q. (By Mr. Irwin): How long did it take you to walk from your village to the waterfront?

A. Half hour or three-quarters of an hour.

Q. How long did it take to take the small junk, to catch the boat from Kong Moon?

A. About half an hour.

Q. After you got on the boat at Kong Moon, how long was it before it sailed?

A. About 4:00 o'clock when it started sailing.

The Court: Is that 4:00 o'clock in the afternoon?

The Witness: Yes, 4:00 p.m.

Q. (By Mr. Irwin): When did you arrive at Kong Moon?

A. The next morning, about 6:00 o'clock.

Q. Did you sleep on the boat that night?

A. Yes, overnight on the boat. [104]

Q. When you woke up, was the boat already in Kong Moon? A. Yes.

Q. After you woke up, what did you do at Kong Moon? A. We transferred to another ship.

Q. How did you transfer?

A. We walked to the other boat.

The Court: You what?

The Witness: We walked to the other boat.

Q. (By Mr. Irwin): When this boat got to Kong Moon, was it tied up at a wharf?

A. Yes.

Q. Do I understand you got off the boat and walked to another boat to Macao, is that it?

(Testimony of Tam Fay Hing.)

A. Yes.

Q. How long did it take to walk from the boat that brought you from Kong Moon to the boat that was going to take you to Macao?

A. Over 10 minutes.

Q. After you got on the boat for Macao, how long was it before that boat sailed; after you got on the boat that was to take you to Macao, how long a time was it before that boat sailed?

A. About 8:00 or 9:00 o'clock before it sailed.

Q. Is that in the morning?

A. In the morning. [105]

Q. When did you arrive at Macao.

A. Evening.

Q. Of the same day? A. The same day.

The Court: What time in the evening? When you say, "in the evening," what do you mean?

Mr. Irwin: I was going to ask him if it was dark.

The Witness: About 6:00 o'clock, I believe.

Q. (By Mr. Irwin): How big a boat was it that took you from Kong Moon to Macao?

A. Larger than the boat that run in the village waters, and it is a steamer, motor steamer.

Q. After you got to Macao about 6:00 o'clock in the evening, what did you do?

A. Nothing much.

Q. Did you go ashore or did you go to another boat, or what did you do?

A. Yes. We transferred to another ship then.

Q. Where was that ship going?

(Testimony of Tam Fay Hing.)

A. That is the one to Hong Kong.

Q. Do you happen to remember the name of that boat? A. Dock Shing.

Q. How big a boat was that?

A. It is bigger than the river boat—excuse me. It is bigger than the village boats. [106]

Q. Did you sleep on that boat? A. Yes.

Q. Do you know how long it was after you got on the boat, the Dock Shing, how long it was before it sailed for Hong Kong?

A. About 12:00 o'clock.

Q. Day or night? A. Night time.

Q. Did I ask this question? I think I did ask about sleeping. Did you have a cabin or did you sleep on deck chairs, or where did you sleep on this boat from Macao to Hong Kong?

A. Those campus chairs in a sort of steerage room.

Q. You say that you sailed from Macao about midnight. What time did the boat arrive at Hong Kong?

A. About early in the morning, say about 7:00.

Q. When did you leave the boat and go ashore at Hong Kong?

A. Little after 7:00, some time around 7:00.

Q. You say you left Macao about midnight and you got off at Hong Kong about 7:00. Was the boat sailing all the time between midnight and 7:00 o'clock the next morning?

A. After we arrive at Hong Kong, there is a

(Testimony of Tam Fay Hing.)

custom tender that must approach the big ship before it can enter the harbor. [107]

Q. How long did it take the boat to sail from Macao to Hong Kong?

A. About three or four hours for sailing, if it were moving.

Q. Do you know, or has anyone told you how far it is by water from Macao to Hong Kong?

A. I was told, the time was told to me by someone.

Q. You said your boat left Macao at midnight, that it took about three or four hours sailing, but that you didn't get off at Hong Kong until 7:00 in the morning. Why did it take that long?

A. I said a while ago before the big ship could enter the harbor of Hong Kong, a tender of the customs department must approach the big ship before they can pull into the harbor, and that is where most of the time is being wasted.

Q. Before the boat pulls into the harbor, are you and the other people questioned by the immigration and customs officials?

A. Not much questioning, except whether you have vaccination.

Q. Is that all done outside before the boat docks? A. Yes.

Q. To go back again to when you got on the boat at Macao, you say that was about 6:00 p.m. at night, is that right? [108] A. Yes.

Q. You say that the boat sailed at midnight?

A. Yes.

(Testimony of Tam Fay Hing.)

Q. What did you do between the time you got on the boat at 6:00 p.m. and the time it sailed at midnight? A. After dinner, I slept.

Q. That is what I wanted to know. Did you have dinner? A. Yes.

Q. Then what did you do after you got through eating?

A. By the time after dinner, 8:00 or 9:00 o'clock, we retired.

Q. You say the boat sailed at midnight. If you retired at 8:00 or 9:00, how do you know the boat sailed at midnight?

A. When the boat start moving, they call a whistle and it woke me up that night.

The Court: May I ask a question?

Mr. Irwin: Certainly, your Honor.

The Court: Did you have a watch with you?

The Witness: The boat has a clock. My third brother tell me so.

The Court: Your brother told you the boat left at midnight?

The Witness: When the whistle was pulled, when I heard the whistle, I asked my brother what time it was and he told [109] me the time. I was a little seasick, too, so I wasn't feeling too good that evening.

Mr. Irwin: I have got him to Hong Kong now, your Honor.

Cross-examine.

Miss Martin: I have a problem here, if your Honor please. If I don't get started on cross-

(Testimony of Tam Fay Hing.)

examination early enough today, I won't be able to complete it as to both plaintiffs without their having an opportunity to get together over the holiday recess. I would like to ask this witness a few questions and perhaps defer the major cross-examination of both witnesses until we take up again.

The Court: I understand you want to quit at noon.

Miss Martin: That isn't my purpose at this point.

The Court: How many more witnesses have you got?

Mr. Irwin: What I was going to ask permission to do is this, subject to objection from the United States Attorney. I understand the father has made this trip from Macao to Hong Kong several times. Your Honor raised the question yesterday about an overnight trip, and this is by way of an offer of proof. It is my information that they got on a ship in the early evening. Then they have dinner. The boat does sail, depending on the tide, somewhere in the late evening or midnight. It is only a three or four-hour passage. It is 40 knots from Macao to Hong Kong. But if a boat arrives off Hong Kong before 7:00 o'clock in the morning, the port [110] does not open until 7:00 o'clock, so it lays off the port until 7:00 o'clock. That is why you have heard these others say that it is overnight, and then again that it is three or four hours. That is why I was going to ask permission to recall the father, because he has made this trip more times, although I under-

(Testimony of Tam Fay Hing.)

stand the father never made the trip from the village to Macao the same way. That trip has been changed since the war. His last trip was 1933.

The Court: Other than the father, have you any other witness?

Mr. Irwin: I have one, but he isn't here now.

The Court: You are going to use him only to try to establish these other points, but they don't know about these applicants?

Mr. Irwin: No. I will say one of them will be short and I don't think will affect the cross-examination. The father handed me some letters this morning and the interpreter told me they are about the fifth son. The father has with him three letters from the fifth son including a report card.

Miss Martin: Are you making an offer of proof?

Mr. Irwin: I am not saying what he said except what my interpreter tells me. There is a report card and two or three letters merely showing there is a fifth son. Whatever weight your Honor might give to the father's difficulty on the birth date, these letters in the last several years [111] from the boy—

The Court: The District Attorney, as far as I know, has never denied that there are children of the names that appear in these various papers.

Mr. Irwin: That is true.

The Court: But the problem the District Attorney has is whether or not these are the children.

Mr. Irwin: That is quite true.

The Court: As far as his fifth son is concerned,

(Testimony of Tam Fay Hing.)

I don't know whether the District Attorney is making any point of the fact that there is a fifth son. As far as I know, there will be no evidence in the case about the fifth son except incidentally.

May I suggest this? I think it is important to cross-examine these boys before taking a recess. I would like to get the cross-examination out of the way this morning.

Miss Martin: I don't think I can make a very short cross-examination of the two boys. In other words, I don't think I can complete my cross-examination of the two plaintiffs within the time remaining.

The Court: You don't want to start then?

Miss Martin: I wouldn't mind asking this witness a very few questions, but I don't want to, because if I start anything of any importance, then the recess will occur and they will have time to get together on it, so I would rather defer [112] all cross-examination until we continue again and have Mr. Irwin complete the witnesses.

Mr. Irwin: I just have this observation. Again, I am entirely sympathetic to your understanding, but suppose we were to adjourn right now until Monday or Tuesday, you would still have a half day and then a two-hour recess before they would come back, so we have the same problem of completing the cross-examination of both of them in a half day. I am not objecting. I just raise that as a point.

The Court: Of course, we could work until 4:00

(Testimony of Tam Fay Hing.)

or 5:00 or 6:00 o'clock this afternoon, except you don't want to.

Miss Martin: I would have been happy to have finished this case, but there has never been a minute that has been used up by the defense. The whole thing is the plaintiffs' case.

The Court: It has taken twice as long to complete this case from the plaintiffs' side as it usually does.

Miss Martin: I can't help that.

The Court: Suppose we go ahead and you complete your case as far as you can go. Where are the other witnesses?

Mr. Irwin: The father is in the hall.

The Court: You may step down.

(Witness withdrawn.)

Mr. Irwin: I felt we were making pretty good time until [113] we ran into this witness yesterday afternoon. This is the first one of these I have tried.

TAM DOCK LUNG

recalled as a witness by and on behalf of the plaintiffs herein, having been heretofore duly sworn, resumed the stand and testified further, through the interpreter, as follows:

Direct Examination

(Continued)

By Mr. Irwin:

Q. You have previously testified you are the gentleman who contends you are the father of the two boys? A. Yes.

(Testimony of Tam Dock Lung.)

Q. How many times have you taken the boat trip from Macao to Hong Kong?

A. I can't recall how many times.

Q. More than once?

A. Many times, many times.

Q. Have you taken the boat that leaves at night from Macao to Hong Kong? A. No.

Q. That's the end of that. Have you with you some letters from your fifth son? A. Yes.

Q. Are you sure you understood me correctly? You have never taken the night boat from Macao to Hong Kong? [114] A. No.

Q. When you have taken the boat from Macao to Hong Kong, what time of the day or night does it travel? A. Daytime.

Q. Is there a night boat, too?

A. There are.

Q. On the day boat, how long is the sailing time from Macao to Hong Kong?

A. Three or four hours we would get there.

Q. Do you know how far it is from Macao to Hong Kong? A. I do not know.

Mr. Irwin: He has in his hand certain letters. What are they? Before we get into reading the letters, let me ask another question.

Q. From whom are the letters?

A. Tam Jing Hing sent them to me.

Q. Is that the boy you have identified as the fifth son? A. Yes.

Q. What are the dates of the letters?

A. I have no glasses. C.R. 18.

(Testimony of Tam Dock Lung.)

Q. Will you look at them?

The Interpreter: May I read them?

Mr. Irwin: Yes, please.

The Interpreter: School record report [115] card.

Mr. Irwin: What is the date?

The Interpreter: I am trying to find it. 37th year, first semester, record of grades.

Mr. Irwin: Does it give the name of somebody?

The Interpreter: Tam Jing Hing.

Mr. Irwin: What is the date?

The Interpreter: 37th year, first semester, junior high school, third year.

Miss Martin: We are not interested in the contents. We want the date.

Mr. Irwin: You haven't given it in English.

The Interpreter: First C.R. 37, that is 1948.

Mr. Irwin: Where is it from?

The Interpreter: Kwangtung Province, Quan Na Middle School.

Mr. Irwin: Is there an envelope that that came in?

The Interpreter: Yes.

Mr. Irwin: Can you give us any postal stamp date on there, Madam Interpreter?

The Interpreter: I see Canton So No. 1, and in Chinese it says Quan Chow, which is Canton.

Mr. Irwin: May I have this marked for identification what has been identified as the report card, and I am going to ask at the recess if the interpreter will make a translation. [116]

(Testimony of Tam Dock Lung.)

The Court: Let's mark it for identification. It will be marked Plaintiffs' Exhibit for identification No. 7.

The Clerk: So marked.

(The document referred to was marked Plaintiffs' Exhibit No. 7 for identification.)

Mr. Irwin: Does he have some other letters there, Madam Interpreter?

The Interpreter: These are two more letters that the son Jing Hing wrote.

Mr. Irwin: What date is on the envelopes, Madam Interpreter?

The Interpreter: This is one from Quan Chow, 38 year, 11th month, 20th day.

Mr. Irwin: What would that be?

The Interpreter: January 8, 1950.

Mr. Irwin: May that be marked for identification, please?

The Court: It may be marked Exhibit 8 for identification.

The Clerk: So marked.

(The document referred to was marked Plaintiffs' Exhibit No. 8 for identification.)

Q. (By Mr. Irwin): Where is the letter? This is just the envelope.

A. The letter is gone. [117]

The Court: That is an envelope only, then?

Mr. Irwin: I will withdraw this, your Honor, unless government counsel wants to look at it. It serves no purpose if it hasn't got anything in it.

(Testimony of Tam Dock Lung.)

Q. Is the other an envelope, too?

A. Yes, from the same town.

Mr. Irwin: I see no point in cluttering up the record.

The Court: Then we will withdraw Exhibit 8 and you may have it back, and we have only Exhibit 7 for identification.

Mr. Irwin: Yes.

The Court: All right.

Mr. Irwin: I have another question along that line.

Q. Why didn't you seek to bring this son into the country with the other two boys? Why hasn't this boy tried to come to the United States?

A. He cannot leave Canton.

Q. Why?

A. He is not allowed to leave while he is studying there.

Q. Not allowed to leave by whom?

A. The Communist regime doesn't allow him to leave.

Mr. Irwin: That's all.

Miss Martin: One question. [118]

Cross-Examination

By Miss Martin:

Q. Why didn't you bring your daughter to the United States?

A. My wife doesn't want her to come to the United States.

Q. Doesn't your wife want to come to the United

(Testimony of Tam Dock Lung.)

States? A. She doesn't like to come.

Miss Martin: No other questions.

The Court: I have a question. You say that the woman in this picture, Exhibit 6, is your wife?

The Witness: No error.

The Court: Have you any other picture of your wife?

The Witness: No.

The Court: This is the only picture that was sent to you showing your wife?

The Witness: No other one.

The Court: Have you any other pictures showing your sons or your daughter?

The Witness: No.

Mr. Irwin: I have another question along that line.

The Court: All right. [119]

Redirect Examination

By Mr. Irwin:

Q. In your village where you lived, are there any cameras? A. Not in my village.

The Court: You know, I started out with the thought it was very difficult to get pictures. I find out now that these people go to the market and in the market they have galleries, picture galleries, and they can get pictures when they want them.

Mr. Irwin: I was going to ask one or two questions.

The Court: All right.

Q. (By Mr. Irwin): How far is it from where

(Testimony of Tam Dock Lung.)

your home is, your village, to the first place where you can have a picture taken? A. Noon Now.

Q. Did you ever have any other pictures of your wife at any time? A. In the village, no.

The Court: This case goes back before either the war or the Communist invasion. In other words, there was a long period of time when this family was of maturity when China was at what they would call peace. There were no Japanese and no Communists. The cases indicate where these people live in a village, they go to nearby markets for the purpose [120] of getting food, and that many of the cases in this district show they have testified there are markets where they go to have pictures taken.

Mr. Irwin: In the other case, the man and wife had a wedding picture taken some distance from the village. We don't have a picture, but the children say when they were little boys, the mother used to show them the wedding picture. However, I asked this man through the interpreter if he had any wedding pictures, and he said no. I would like to ask one other question.

Q. To your knowledge, was your wife ever out of your native village until she went to Hong Kong here within the last two years? A. No.

Q. How many people live in your village?

A. Over 20 years ago. I don't know how many are living there now.

Q. How many were there 20 years ago?

A. I think around 30.

(Testimony of Tam Dock Lung.)

Q. How far was it to the nearest town?

A. Quite a ways. You have to pass many hills before you can get to Toy Shan.

Q. How many hours walking time?

A. That I don't know.

Q. Have you walked it? [121] A. No.

Q. How did you get back to your native village?

A. About 14 or 15 po distance.

Mr. Irwin: What's that?

The Interpreter: About 10 lis to a po.

Mr. Irwin: And how far is a li?

The Interpreter: A li is about a third of an English mile.

Mr. Irwin: And a po is about how many lis?

The Interpreter: A po is about three miles.

Q. (By Mr. Irwin): How many pos?

A. 14 to 15 pos.

Q. 42 miles, would that be the distance?

The Court: Distances in China mean a whole lot more than here. We get in an automobile and go 100 miles and don't think anything about it, but a trip that far in China is something else.

Mr. Irwin: Would you translate that in miles? 14 miles, I guess. You say a li is a third of a mile, and if you get 42 lis divided by 3, that is 14 miles.

The Interpreter: Yes.

The Court: May I ask this witness a question?

Mr. Irwin: Certainly.

The Court: When you returned to the village after coming to the United States, you say there

(Testimony of Tam Dock Lung.)

were only 20 or 30 [122] people living in the village?

The Witness: That's about it.

The Court: Are there any stores in the village?

The Witness: The stores are in the old village.

The Court: How many people are in the new village?

The Witness: Now, I don't know.

The Court: Was the new village built when you were there, when you went back to see your wife?

The Witness: Yes. It was finished when I went back.

The Court: How many houses were in the new village?

The Witness: 21 houses.

The Court: Were there any stores in the new village?

The Witness: No.

The Court: When you went back to visit your wife, where did you buy food?

The Witness: We went to the old village to purchase it.

The Court: You told me there were no stores in the old village.

Mr. Irwin: He said in the new one, there was none.

The Court: All right. Ask him again, were there any stores in the old village?

The Witness: Yes.

The Court: What kind of stores?

The Witness: Provision stores.

(Testimony of Tam Dock Lung.)

The Court: And you bought all your provisions in the old village? [123]

The Witness: Yes.

The Court: How close was the closest market to the new village?

The Witness: There are two names to that market, San Bot Hui or Woon Wo.

The Court: How far was the market from your village?

The Witness: Seven or eight li.

The Court: Seven or eight li?

The Witness: Yes.

The Court: Did you ever go down to the market to buy anything?

The Witness: Some times.

The Court: Was there a place to take a picture at the market?

The Witness: No.

The Court: Did your wife ever go down to the market with you?

The Witness: No.

The Court: Did any of the children go down to the market with you?

The Witness: No.

The Court: You say you sent money back to China for your family while you were here in the United States?

The Witness: Yes.

The Court: To whom did you send it? [124]

The Witness: Before I went back to Hong Kong to some store.

(Testimony of Tam Dock Lung.)

The Court: How did your family get the money from Hong Kong?

The Witness: From the old village, there is an old gentleman that runs back and forth between the old village and Hong Kong for business.

The Court: He would pick up the money?

The Witness: Yes.

The Court: To whom would he give it?

The Witness: To my wife.

The Court: You never sent any money direct to your wife?

The Witness: Sometimes I sent it to the post office in the market place for her.

The Court: Did you send any of the money to any merchant at the market place?

The Witness: They asked somebody to deliver it to my house, the post office.

Mr. Irwin: Your Honor, I think if you pursue it further, the people he sent it to are strangers.

The Court: I know what they do, or at least I know what they say they do. It may be an entirely different story, what they do.

Mr. Irwin: Also, your Honor might care to ask this, and [125] if not, I would like to ask. He was married in 1908. According to Chinese custom, the wife did not move about, in fact she couldn't move freely.

The Court: You can ask any question you want.

Q. (By Mr. Irwin): First of all, how old are you?

A. 65 years old, Chinese calculation.

(Testimony of Tam Dock Lung.)

Q. You were married when?

A. K.S. 34-1-29.

The Interpreter: 1908.

Q. (By Mr. Irwin): Before you were married, where did your wife live?

A. She lived with her parents.

Q. Where, what village?

A. Mow Gon Gek Village.

Q. How far was that from your village?

A. Over a po.

Q. How old was your wife when you were married? A. I am one year older than my wife.

The Court: Let me try to find out something. How many pos are there to a li?

The Interpreter: 10 lis to a po.

The Court: And one li is about a third of a mile, so a po is about $3\frac{1}{3}$ miles?

The Interpreter: Yes.

The Court: So this village in our calculation was about [126] $3\frac{1}{2}$ miles away.

Mr. Irwin: His wife's native village?

The Court: Yes.

Q. (By Mr. Irwin): You say there were 20 or 30 people living in the new village. I don't think we have how many people lived in the old village.

The Court: He testified, but you can ask him again.

The Witness: That I don't know.

Q. (By Mr. Irwin): How many were there when you were last in it? A. I don't know.

(Testimony of Tam Dock Lung.)

The Court: How many houses were in the old village?

The Witness: About 300 houses in the old village.

The Court: I thought I asked him that a little while ago.

Mr. Irwin: I think it was the new village.

The Court: There are 300 houses in the old village?

The Witness: Yes.

The Court: Or there was when he was last there.

The Witness: Yes, in the old village.

Q. (By Mr. Irwin): Your testimony is you left China in 1909? A. Yes.

Q. And that you made three trips back to China between 1909 and 1933? [127]

A. That's right.

Q. Why did you not go back to China since 1933?

A. I planned to, I make a passport application, but due to financial trouble, I was unable to materialize that trip.

Q. Did the war in China have anything to do with it? A. I lost my business over here.

The Court: This witness has brought up a new problem in these cases. I have quite a number of them, so it isn't this particular case. I noticed this fifth boy couldn't leave Canton because of the Communists, he testified. Well, if I understand correctly, the Communists control all the mainland of China. Hong Kong is English, but they control

(Testimony of Tam Dock Lung.)

Canton. I would assume that they would control this Toy Shan province. If the Communists are restricting these boys from coming to the United States, why are so many coming over at this time? Why are they being allowed to come? I wonder what the story is.

Mr. Irwin: I was going to go into that, your Honor. I don't want to make any statement. The testimony shows these boys, I think, were in Hong Kong for two years. Their dates of arrival, I believe, are April or May of this year. That would take us back to 1950. With your Honor's approval, I will go into it and ask how these boys happened to get out.

The Court: I am not so much interested in this particular case, but I am interested in the other cases. We have had all these children come in from Toy Shan Province. We have had testimony relative to the Communists and relative [128] to the Japanese, but this is the first intimation we have had in any of these cases that these Communists were refusing to allow youngsters to come to this country. If it is true in Canton, why wouldn't it be true in other parts where the Communists control?

Mr. Irwin: I think I can ask him a question on that.

The Court: All right.

Q. (By Mr. Irwin): You tell us that the fifth son cannot leave Canton because of the Communists? A. Yes.

(Testimony of Tam Dock Lung.)

Q. How were your third and fourth sons able to leave the new village?

A. When they were in the village at that time, they have a pass to get out of the village.

Q. A pass from whom?

A. At that time, there was no restriction yet, so they could give you passes to leave the village.

The Court: Who gave you passes? Who gave the passes?

The Witness: At that time, they weren't so strict, the Communists.

Miss Martin: What time is he speaking about, if I may inquire?

The Court: Well, wait just a minute. The Communists gave the passes? [129]

The Witness: At that time, yes.

The Court: Do you know your boys have passes from the Communists?

The Witness: They got permission and after the permission was granted, the Communists government took back the slip, the permit, we call it.

The Court: How do you know?

The Witness: They told me about it.

Mr. Irwin: I have a suggestion, your Honor. The third boy seemed to be the brighter of the two. Without any interruption and without the father talking to him, I know the Court is desirous to get the facts, so let's ask to have him brought in and have him put on the stand.

The Court: Then let's have the father sit over in the jury box, and call the third son in.

(Witness withdrawn.)

TAM CHUNG FAY

called as a witness by and in behalf of the plaintiffs herein, having been previously duly sworn, resumed the stand and testified further as follows:

Examination

By the Court:

Q. You testified you left the village for Hong Kong in CR 39-1-15, is that correct? [130]

A. Yes.

Q. Before you left the new village for Hong Kong, were there any Communists, or did the Communists have control of your village?

A. I don't know whether they took control or not.

Q. Did you have to get any permission from the Communists to leave your village? A. No.

Q. Did you ever get a pass from the Communists?

A. You mean to ask when I left the village or to go out from the town itself? You mean to go to Hong Kong?

Q. When you left the village to go to Hong Kong in CR 39-1-15, did you have to get a pass?

A. Which bureau do you mean to say?

Q. Which what?

A. Which bureau for permission?

Mr. Irwin: Any bureau.

The Witness: Yes, I asked for permission to go to Hong Kong from the village.

Q. (By the Court): Did they give you a pass, a written paper? A. Yes.

(Testimony of Tam Chung Fay.)

Q. Where is that paper?

A. After I got out, I have to return it to them, send it back to them. [131]

Q. How did you send it back?

A. Through the mail.

Q. Did your brother get a pass, too?

A. Yes.

Q. What did he do with his pass?

A. The same way.

Q. Did he send it back or did you send it back for him? A. I sent mine.

Q. To whom did you send it?

A. To my village.

Q. Who in your village?

A. For my mother to return it.

Q. You sent it to your mother?

A. After I sent it back to my mother to return to the bureau, I don't know what details happened.

Q. What did the pass say?

A. With our name, all the necessary parts we have to pass through, to let us go through.

Q. Do you remember the wording of the paper?

A. No, not clearly.

The Court: Now we will ask this witness to sit over in the jury box.

Miss Martin: May I ask one or two questions at this point? [132]

Mr. Irwin: May I just ask something before you cross-examine, and then you can go ahead?

Miss Martin: All right.

(Testimony of Tam Chung Fay.)

Redirect Examination

By Mr. Irwin:

Q. Who in the village did you go to get the paper, what was the man's position?

A. The staff of that department.

Q. What department, what staff?

A. The head of the Bo.

The Interpreter: The Bo is something like the head of the village.

Q. (By Mr. Irwin): The head of the new village or the old village?

A. Our Don Hong village.

The Court: Let me ask a question.

Did you get this pass from the head of the village or from the Communists?

The Witness: It is the man in charge of that department, the Bo Jon.

The Court: Is that one of the villagers that was there before?

The Witness: At that time, there was still the Chinese control.

The Court: This pass that you got, you got it from a [133] man, is that right?

The Witness: Yes.

The Court: Was that man one of the villagers you got it from?

The Witness: Yes, one person of the village.

The Court: It was not a stranger that belonged to the Communist Army?

The Witness: No.

(Testimony of Tam Chung Fay.)

The Court: Why did you have to get a pass from a villager to leave the village?

The Witness: Because on account of the chaotic conditions in China.

The Court: Now, Miss Martin, have you got a question or two?

Miss Martin: Yes.

Cross-Examination

By Miss Martin:

Q. Was your mother still in the village at the time you mailed the pass back from Hong Kong?

A. She was in the village. She hasn't even come to Hong Kong yet.

Q. Your mother didn't accompany you to Hong Kong when you had a pass to go to Hong Kong?

A. Just the two brothers of us, just we two brothers left without my mother. [134]

Q. Did your mother ever get a pass and go to Hong Kong after that? A. Yes.

Q. But she didn't go when you went to Hong Kong? A. No.

Q. The man who gave you the pass, was he a Communist? A. No.

Miss Martin: That's all I want to ask at this time.

Redirect Examination

By Mr. Irwin:

Q. How long had he been the man in the village that you got passes from? A. What?

(Testimony of Tam Chung Fay.)

Q. How long had he been the man in charge of the village, how many years?

The Court: Let's put it this way. How long had you known the man from whom you got the pass?

The Witness: I don't know how many years I have known him, but my mother was the one that went and asked for it for us.

The Court: Your mother got the pass for you instead of you getting the pass, is that right?

The Witness: My mother went and got it.

The Court: How long were you in Hong Kong before your mother came to Hong Kong? [135]

The Witness: Several months.

The Court: What do you mean by several months?

The Witness: About four months.

The Court: How long did your mother remain in Hong Kong before she went back to the village?

The Witness: Now she is in Hong Kong even.

The Court: After she came to Hong Kong to see you, did she ever go back to the village, as far as you know?

The Witness: No.

The Court: Now, let's have the other boy.

Mr. Irwin: May we have one other question that may be of interest along that line?

The Court: Yes.

Q. (By Mr. Irwin): Why didn't your mother go back to the village?

(Testimony of Tam Chung Fay.)

A. Her pass was expired and she wanted to go back, but her pass was expired already.

Q. You told the judge your mother got the pass. Did you or your brother go with your mother to see the man about the pass?

A. That I don't know. My mother went and got it for us.

Q. Yesterday you said you went to school in the old village, right? A. Yes. [136]

Q. And it was the old village that your mother went to see the man about the pass?

A. I really don't know where she got it.

Q. Did she tell you the name of the man?

A. No.

Q. Wasn't there a man's name on the pass?

A. I didn't pay attention to it.

Mr. Irwin: All right. I have tried.

The Court: Now, let's have the other boy, and have this one sit over in the jury box.

(Witness withdrawn.)

TAM FAY HING

called as a witness by and in behalf of the plaintiffs, having been previously duly sworn, resumed the stand and testified further as follows:

Examination

By the Court:

Q. You said that you left the village for Hong Kong in CR 39-1-15, is that correct? A. Yes.

(Testimony of Tam Fay Hing.)

Q. You also said that you left the village with your brother, is that correct?

A. My brother, third brother.

Q. Did your mother go with you and your brother to [137] Hong Kong? A. No.

Q. How long were you in Hong Kong before your mother joined you in Hong Kong?

A. She came in CR 40.

Q. How many months later?

A. About four or five months.

Miss Martin: I will ask the Court to ask the father not to coach the witness.

The Court: I thought I heard something over there a while ago but I wasn't sure.

Will you tell the father and son they are not to say anything?

(Interpreter speaking to parties.)

Q. You say your mother joined you four or five months after you had been in Hong Kong?

A. She went in CR 40, about the fifth month.

Q. About what?

A. About the fifth month.

Q. CR 40, about the fifth month. Did your mother ever return to the village while you were in Hong Kong? A. No.

Q. When you left the village to go to Hong Kong, did you have a pass of any kind?

A. I don't remember having one. [138]

Q. You don't remember whether you had a pass?

A. I don't think I have a pass.

(Testimony of Tam Fay Hing.)

Q. When you left the village to go to Hong Kong, were there any Communists in the village?

A. Not quite to our village yet.

Q. Was it necessary to get permission from the Communists to go to Hong Kong? A. No.

Q. Did you send a pass back to the village from Hong Kong?

Did you ever write back to the village when you got to Hong Kong? A. Yes.

Q. To whom did you write?

A. To my mama.

Q. Did you send your mama anything other than just a letter? Did you send her any papers of any kind? A. Yes.

Q. What did you send her? A. Letters.

Q. That is letters that you wrote yourself?

A. Yes, sometimes my brother write, sometimes I do.

Q. You didn't send her any letters or any papers you got from third parties, did you?

A. No. [139]

Mr. Irwin: May we approach the bench?

(The following proceedings took place at the bench outside the hearing of the witnesses.)

Mr. Irwin: May the record show this is not in the hearing of the witnesses, your Honor?

I have in mind, your Honor, the seniority of the sons sometimes enters into this. In other words, the younger boy might not have anything to say about it. Would you care to inquire whether or not

(Testimony of Tam Fay Hing.)

he and his brother had to get permission to leave the village from anybody?

The Court: Yes, I will ask that.

Mr. Irwin: I am as anxious to get the truth as you are. It might be that there was one pass handed to the elder of the two boys.

Miss Martin: The brother's testimony was quite clearly that he just returned his pass.

Mr. Irwin: But maybe he doesn't know about the other.

The Court: And he said, also, the brother returned his pass.

Mr. Irwin: Did he say that, too?

The Court: I will ask him again.

Mr. Irwin: I just wanted to be sure.

(The following proceedings took place in open court.)

Q. (By the Court): When you left the village to go to Hong Kong, did you have to get permission from anyone to make [140] the trip? A. No.

The Court: Miss Martin, have you got any questions?

Miss Martin: No.

The Court: Have you got any other witnesses?

Mr. Irwin: May we just approach the bench again?

(The following proceedings took place at the bench.)

Mr. Irwin: Again I want to be sure that we have covered whether anyone in his family had to get permission for him to leave.

(Testimony of Tam Fay Hing.)

Miss Martin: You can ask him any question you want.

Mr. Irwin: This is Mr. Brennan's case. In the light of this, I don't want to press it any further right now. If we have completely covered this situation here, there is so much disparity. There is certainly a direct contradiction.

Miss Martin: I hope the Court has been noticing the father during this interrogatory.

Mr. Irwin: Has he talked?

Miss Martin: Yes.

Mr. Irwin: Well, he hasn't helped him any.

Miss Martin: That is true.

Mr. Irwin: That is the only question I wanted. I don't want to put leading questions and that is why I was asking if your Honor would do it.

The Court: He says he didn't have any [141] papers.

Mr. Irwin: That's right.

The Court: But I will ask him the question for the record.

Mr. Irwin: Just did anyone, and if he says no or he doesn't know, then we will pass it up, but I would like to then have it go over to Tuesday, because I will want to ask to withdraw.

(The following proceedings were had in open court.)

Q. (By the Court): When you left the village to go to Hong Kong, you said you did not have to get permission from anyone to make the trip?

A. I don't know what permission you mean.

(Testimony of Tam Fay Hing.)

Q. Did you have to speak to anyone before you left the village? A. No.

Q. Did anybody give you a paper when you left the village? A. Yes.

Q. Who?

Miss Martin: Now, I want the record to show before he answered that question, he looked at the father and the father nodded his head. I think definitely the father was telling him the answer. I know it is argumentative to say that, but I want the record to show I noticed it.

The Court: Well, we will have the testimony here. He [142] testified he did not, and now he says he did. I just want to know.

Mr. Irwin: And I want to join with Miss Martin in the statement. I saw the father and the brother both nod in the affirmative before the witness answered. I certainly do not approve of that. I would like to have the interpreter instruct them again that if they indicate by sound or voice or movement any answers, they may be in trouble with the court.

The Court: You might tell them they may be jeopardizing their own case.

Mr. Irwin: That's right.

(Interpreter speaking to parties.)

Q. (By the Court): You said you got a paper when you left the village. From whom did you get the paper?

A. My third brother got it. I don't know what it is all about it.

Q. Can you read?

(Testimony of Tam Fay Hing.)

A. I have been to school.

Q. Did you read the paper you got?

A. He didn't show it to me.

Q. How do you know he got it for you?

A. He told me so.

Q. Did you ever see it?

A. No. My brother handled it.

Miss Martin: May we ask the witness what the brother told [143] him the paper was?

Q. (By the Court): Did your older brother or your No. 3 brother tell you what the paper was?

A. It was a pass of some kind.

The Court: Well, we are not going to finish this case today, so I think it can be continued over until Tuesday. We can finish up this case Tuesday.

Mr. Irwin, I might say I was satisfied yesterday that this boy didn't know very much about that trip from the village to Hong Kong, because he testified differently on three or four different occasions. Now he comes in and refutes the testimony given by the older brother. A very serious doubt arises in my mind in this case.

Mr. Irwin: There is a doubt in my mind about further advocating it, your Honor. These questions were handed to me this morning, as I said, and I wouldn't vouch for them. I would therefore appreciate the matter going over.

The Court: We will recess this case until 10:00 o'clock on Tuesday morning. The court will stand in recess until 10:00 o'clock Monday morning.

(Whereupon, an adjournment was taken to 10:00 a.m., Monday, December 30, 1952.) [144]

December 30, 1952, 10:00 A.M.

The Clerk: No. 13,842, Tam Dock Lung vs. Acheson, further trial, and also the other two cases trailing. ..

(Other court matters.)

Mr. Irwin: As to the case on trial, may it please the court, is your Honor ready to consider that?

The Court: Yes.

Mr. Irwin: Your Honor, before resting, I have not talked to the plaintiff or the two alleged sons since we recessed Wednesday. I would like, pursuant to your Honor's approval, to have the interpreter inquire of the father and the two boys whether they have anything further to volunteer. I do not propose to ask anything further. Does your Honor think that would be appropriate? If not, I would like to rest.

The Court: I don't know about asking for any explanations. The chances are over the week end they have discussed this matter. They have probably arrived at some conclusion among themselves. Of course, I don't know what is going to happen in the future. They may come in and obtain other counsel and make an appeal. Some criticism might be raised about the court, because they weren't allowed to explain.

Mr. Irwin: That is what I had in mind, also, your Honor, the possibility criticism might be directed to the court and to their counsel for having in effect stopped. [146]

The Court: Suppose we call the father up here first.

Mr. Irwin: Will you ask the father to come forward, please?

TAM DOCK LUNG

recalled as a witness by and on behalf of the plaintiffs herein, having been heretofore duly sworn, resumed the stand and testified further, through the interpreter, as follows:

The Court: Will you allow me to do the questioning?

Mr. Irwin: I would be very happy to, your Honor.

The Clerk: Your name again, please?

The Witness: Tam Dock Lung.

Examination

By the Court:

Q. You have testified in this case. Your attorney now indicates that he is ready to rest the case. Do you have any other testimony that you would like to give the court relative to the fact that these two boys are alleged to be your sons?

A. Regarding my sons getting the passes to come, to get out of the village, it was told to me, the information was given to me.

Q. You told us the other day that your sons told you that they had passes. [147]

A. Yes.

Q. Is there any other information you want to give to the court?

A. About the fifth son.

(Testimony of Tam Dock Lung.)

Q. What about the fifth son?

A. Because on account of my age and I was a little confused the other day, I made a mistake in the date of the birth.

Q. What day do you now say your fifth son was born?

A. I remember when my fifth son was born, I was quite excited, because on account of the prematurity of the child, and even now I am not very certain about the date.

Q. Well, when do you say the fifth child was born? A. About the fifth month.

Q. About the what? A. Fifth month.

Q. What year? A. C. R. 20.

Q. C. R. 20, fifth month? A. Yes.

Q. Is there any other information you want to give the court?

A. Because the time when the child was born, my wife and I were pretty excited about it, because the doctor came and tried to save the child, and when my sons asked for information [148] about the fifth son, I gave them the wrong information.

Miss Martin: May we have the interpreter translate C. R. 20, the fifth month?

The Interpreter: From June 16 to July 14.

Mr. Irwin: What year?

The Interpreter: 1931.

Q. (By the Court): Is there anything else you want to tell us?

A. I remember your Honor asked me why we did not ask the fifth son to come to the United States. My wife and I decided for him to study a

(Testimony of Tam Dock Lung.)

little bit more in China before we bring him over to the United States.

Q. Is there anything else?

A. The second reason is my wife is getting on in years and since so many of our boys have already left her to come to the United States to be with me, we deemed it proper to leave a couple of them behind to be with my wife a little longer because she is so old.

Q. Anything else?

A. Regarding my fourth son, comparatively he was born a little slower in mentality. In regards to their arrangement to come to the United States, the third son and the wife—my wife, were the two that manipulated things for the family, and as far as my fourth son is concerned, his memory is [149] sometimes very poor because he is not as intelligent as the third one.

Q. Anything else?

A. No other remarks.

The Court: Do you want to ask anything?

Miss Martin: I would like to ask one question.

Cross-Examination

By Miss Martin:

Q. Why do you not bring your wife to the United States?

A. I failed in business a while back and my finance is limited now.

Miss Martin: That's all.

Mr. Irwin: I have one question, your Honor.

(Testimony of Tam Dock Lung.)

Redirect Examination

By Mr. Irwin:

Q. You have not talked with me since we were last in court except here—withdraw that.

You have neither seen nor talked to me since we left court last Wednesday, have you?

A. No. I haven't seen the attorney's face.

Mr. Irwin: Thank you.

The Court: You may step down.

(Witness excused.) [150]

The Court: Let's have the older boy.

TAM CHUNG FAY

recalled as a witness by and in behalf of the plaintiffs herein, having been heretofore duly sworn, resumed the stand and testified further, through the interpreter, as follows:

Examination

By the Court:

Q. When you were on the stand the other day, you told us about the passes that you got when you left your village. Do you want to make any explanation as to the testimony you made the other day?

A. That is a pass to designate that we were permitted to leave the village in order to come to Hong Kong for the United States.

Q. Where did you get the pass?

A. I asked my mother to go to the old village,

(Testimony of Tam Chung Fay.)

to the Bo Fong, which is the head of a group of families.

The Interpreter: Bo Fong is a man that is in charge of a number of families.

Q. (By the Court): You never did read the pass?

A. After my mother gave it to me, I took and looked at it.

Q. Did you read it? [151]

A. I read it and I remember it said something to this effect, that we are allowed to leave the village and all the way to Hong Kong, passing all parts throughout the destination, I mean throughout the itinerary, in order to get to Hong Kong.

Q. Why was it necessary for you to have a pass to leave the village?

A. It was sort of troubled times.

Q. Were any guards around the village?

A. At that time the Communists were coming, but they haven't arrived with any military forces, but it is understood that the villagers must have a pass to leave their village in order to go to Hong Kong, and should they be stopped on their way, they would know they had been okayed by the village group head.

Q. Did you get the pass for your brother?

A. My brother asked me to get the same for him, but I asked my mother to get it for us both.

Q. Did you get a pass for your brother?

A. The same procedure. My brother asked me

(Testimony of Tam Chung Fay.)

to get his pass and I asked my mother to get them for us and I have them both.

Q. Did your brother ever see his pass?

A. All the way through from village to Hong Kong, he hasn't seen the pass because I took care of them, but after I [152] got to Hong Kong, I misplace his pass and I told him I don't know when I misplace the pass.

Q. Why was it necessary to send the pass back to the village?

A. The reason one has to send it back is because it designates you have safely arrived at your destination, which was Hong Kong for us, and there was no occasion for us to keep it, because we didn't have to return to the village.

Q. Do you want to make any other explanation relative to the pass?

A. That's all there is to it, nothing more.

Mr. Irwin: Your Honor might be interested in this custom on passes, how long he had known that might have existed.

The Court: We have had testimony in case after case and there has been no mention of a pass from any of these villages.

Mr. Irwin: I have just one question then.

Redirect Examination

By Mr. Irwin:

Q. I haven't seen or talked with you since we were last in the court room, have I?

A. No. I don't know anybody.

(Testimony of Tam Chung Fay.)

Mr. Irwin: Miss Martin?

The Court: Miss Martin, have you any [153] questions?

Miss Martin: I would like to ask him a number of questions, your Honor, and I think I would like to ask that the No. 4 be taken out of the room while I do so.

Mr. Irwin: Quite agreeable, your Honor.

Cross-Examination

By Miss Martin:

Q. What is the name of the No. 2 brother who was just here in the court room?

A. Tam Hin Soon.

Q. Do you remember the occasion in China when he left for the United States?

A. All I remember was my mother took him to where the little boat was to leave for the United States from the village.

Q. How old were you at that time?

A. I think about 11. You mean myself?

Q. Yes. A. About 11.

Q. You personally remember that your brother left China, your No. 2 brother left China?

A. Yes.

Q. Do you know what year that was?

A. I think it was C. R. 24.

The Interpreter: 1935 or early 1936. [154]

Q. (By Miss Martin): That would be about 15 or 17 years ago?

(Testimony of Tam Chung Fay.)

A. I think about 17 or 18 years ago.

Q. Were you going to school at that time in China? A. Yes.

Q. The questions I am going to ask you are all relating to the time when your No. 2 brother left China. There was a wall that went all around the village where you lived at that time, wasn't there?

A. Not the new village.

Q. Was there a wall that went all around the old village at that time?

A. On the north side, yes.

Q. Are you sure that the wall did not go all around the old village?

A. As far as I can remember, it is on the north side only, separating the new and the old village.

Q. I am still talking about the time when your brother left China.

A. It seems that my memory was that there was one wall on the north side.

Q. At that time when your brother left China, did you have any photographs in the house of yourself or your brothers or your mother?

A. No. [155]

Q. You are sure that there was no photograph hanging in the main room of your house at the time that your No. 2 brother left China? A. No.

Q. Was there ever any photograph of you and your brothers or your sister or your mother in the house in China? A. No.

Q. If there had been a picture in the house of your family at the time that your No. 2 brother

(Testimony of Tam Chung Fay.)

left China, you would have known about it, wouldn't you? A. Yes. There was none.

Q. Is there a room in your house which you call the parlor? A. Yes.

Q. The old village is north of the new village, that's right, isn't it? A. South.

Q. At the time your No. 2 brother left China, what was the name of the market that was nearest to your village?

A. Sam Bot or Woon Wo. It is the same market with two names.

Q. At the time that your brother left China, there was no post office at that market, was there?

A. You mean the Sam Bot Hui?

Q. Yes. [156] A. There was one.

Q. There was a post office in the Sam Bot market?

A. Sam Bot Hui, yes. Not in the village.

Q. I am talking now about the time when your brother left China 13 years ago, as to whether there was a post office in Sam Bot market then.

A. I remember several years after my brother left, I knew that there was one in Sam Bot market.

Q. At the time your brother left China, did you have to cross any stone bridges to get to that market?

A. If we leave our village to go to the market, we have to pass through a bridge.

Q. What kind of a bridge? A. Stone.

Q. Will you describe the clock that you had in the house at the time that your brother left China?

A. At that time there was no clock.

(Testimony of Tam Chung Fay.)

Q. When did you have a clock?

A. There was no clock in the house even until the time we came to Hong Kong.

Q. Do you know the village named Sai Dock Do?

A. It is south of our village.

Q. How far? A. Over 10 jongs.

The Interpreter: One jong is 10 feet. [157]

The Court: That would be 100 feet then.

Mr. Irwin: Didn't you tell us it was a li?

The Interpreter: 10 feet equals one jong.

The Witness: I know that it is 10 feet, it is one jong, that is what I know.

Q. (By Miss Martin): How far away was the Sai Dock New Village from your village?

A. Over 10 jongs.

Q. Do you know how many lis?

A. I can't figure by lis, but I know it is over 10 jongs.

The Court: May I ask you this? Could you see the village from your home village?

The Witness: Yes.

The Court: Was it close?

The Witness: Almost adjacent to our village on the south side.

Q. (By Miss Martin): Where is Li Toong Village?

A. I can't identify Li Tong. There is a Ling Tong?

Q. Where is that?

A. It is north of our village.

(Testimony of Tam Chung Fay.)

Q. Do you remember when you talked to the Consul in Hong Kong?

A. Not too clearly, but I remember some.

Q. He asked you a lot of questions about your village. [158] Do you remember that?

A. There was questions. I don't remember what he asked, but we were questioned there.

Q. He asked you what school you attended. Tell us what the name of the school was.

A. I studied at the Dong Hong Old Village, Ng Uk Saing School.

Q. You told the Consul that no girls attended that school. Do you remember that?

A. I said no girls were in my class but they were in the school.

Q. How many girls were in the school?

A. The first year when I went there, there were no girls in the school. The second year, about five of them came.

Q. Do you remember telling the Consul that your sister was in school, but there were no other girls in school?

A. No. I said that whether there were any or not, I did not know, but my mother brought my sister to school.

Q. Is it now your testimony that you don't know whether there were any girls in that school or not?

A. I said the time we went to school, whether there were girls or not, I did not know, but my mother brought her to school.

Q. What do you say now as to whether or not

(Testimony of Tam Chung Fay.)

other girls ever attended that school that you attended? [159]

A. Studying with my class, no. In the school, yes, As far as I remember, there were a few the second year I entered.

Q. Is there a river near the village where you lived?

A. There is no such thing as we can call a river there but there is something we call Way.

Miss Martin: Will the interpreter tell us what is a Way?

The Witness: This Way is sort of a body of water. When rain came, it is fuller. When there is no rain, it is drier.

Q. (By Miss Martin): I show you a document and call your attention to the signature in Chinese at the bottom of the page and ask you if that is your signature.

A. The upper one, yes, is mine.

Q. Do you remember the occasion when you talked to the United States Consul and you made that signature?

A. It was never read to me what was in this paper here but I was asked to make a signature, so I signed the name to it.

Q. At the time that you were there at the Consul, did they ask you questions through an interpreter?

A. Yes.

Q. Did you answer those questions truthfully?

A. Yes. I answered questions that were asked of

(Testimony of Tam Chung Fay.)

me, but I do not read English and I don't know how they record my answers. [160]

Q. At the time when those questions were asked you, that was about October, 1951?

A. It was in June, 1951, I was questioned.

Q. And then you were questioned several months later, were you not?

A. Yes, some time in the 10th month, we were asked again questions.

Q. Do you remember the Consul, Mr. O'Donohue?

A. I did not know the name.

Q. This statement with your signature on the bottom purports to be a translation of the questions and answers that were asked there in October. I am going to read—

Mr. Irwin: Just a minute. I understand the District Attorney now is about to read from a purported translation of questions purporting to have been addressed to this witness in China some years ago. In the light of the witness' answers, your Honor, I must object to any direct interrogation or quotation from that alleged statement.

The Court: Don't you think it is proper to ask the witness if he said so-and-so upon a certain date?

Mr. Irwin: Yes, but she started out saying, "I am going to read from a statement." He said it wasn't read, that he was told to sign it.

The Court: Then ask him if the question wasn't asked him and did he make that answer. [161]

Mr. Irwin: That is quite right, but may I ask something else? Is it not the responsibility of the

(Testimony of Tam Chung Fay.)

United States Attorney when they seek to impeach on that ground or objection is made, to be prepared, in the event he answers no, to produce an accurate translation of what took place? Otherwise, they leave an unfair inference in the court's mind.

The Court: We have never got that far. You may raise the issue.

Mr. Irwin: I want a full inquiry, your Honor.

The Court: I doubt very much if the District Attorney can lay a foundation sufficient for the introduction of the document.

Mr. Irwin: I do, too.

The Court: I don't think that is possible.

Miss Martin: Not without getting the Consul from China to testify that they correctly interpreted.

The Court: It can be done, but it can't be done feasibly.

Miss Martin: That's right.

The Court: However, I do think it is proper to ask the witness, weren't you asked so-and-so and wasn't this your answer.

Mr. Irwin: That's all right, but the witness again stated, and I feel a responsibility here, he stated earlier, and I considered the previous questions as in effect voir dire, [162] that he didn't remember the questions that were propounded.

The Court: But can't the District Attorney say, "Well, now, weren't you asked this question and isn't this your answer?"

Miss Martin: I usually ask it that way.

(Testimony of Tam Chung Fay.)

The Court: If he says no, then it is up to the District Attorney to establish evidence that the question was answered differently.

Mr. Irwin: That is my point exactly.

Miss Martin: I will withdraw the pending question and pose another one.

Mr. Irwin: All right.

Q. (By Miss Martin): Do you recall at the time in October, 1951, that you were asked questions before the Consul through an interpreter, that you were asked the following question and that you gave the following answer:

“Q. Were there any girls in your school in the nine years that you attended? A. No.”

A. I said, “In my class, no.”

Q. Do you recall that you were asked the question:

“Q. Were there any girls in your school in the nine years that you attended?”

A. To me the question was that during the nine years school, were there any girl schoolmates in your class and I [163] said no.

Q. Do you remember in October, 1951, that the Consul asked you, through the interpreter, the following questions and you gave the following answers:

“Q. Was the school that you attended co-educational? A. No.

“Q. How did you sister go to this school?”

Mr. Irwin: May I suggest one question be asked at a time?

(Testimony of Tam Chung Fay.)

Miss Martin: All right. I will stop at the end of the first one.

The Witness: It was not asked that way. All I remember they asked were there any girls in my class and I said no.

Q. (By Miss Martin): Do you remember you were asked the following question and gave the following answer:

“Q. How did your sister go to this school?”

“A. Well, the school did not turn down girl applicants. It was during the time that I attended school that no girls applied at that school.”

A. I answered the question by saying that my mother brought my sister to school and she went to school.

Miss Martin: I have no further questions.

Mr. Irwin: I think one question is suggested, your Honor. [164]

Redirect Examination

By Mr. Irwin:

Q. You seem to make a distinction between school and class. What do you mean by that distinction?

A. When I say same class room, it is in the same study room. If it is the same school, it means the entire school.

Mr. Irwin: I have nothing further.

Miss Martin: That's all from this witness.

The Court: You may step down.

(Witness excused.)

The Court: Now we should have the other boy.

Miss Martin: I would like to call the witness Tam Soon, the party who has been admitted, to ask him three questions.

The Court: All right.

Mr. Irwin: That is the No. 2 son, Mr. [165] Bailiff.

TAM HIN SOON

recalled as a witness by and on behalf of the plaintiffs herein, having been heretofore duly sworn, resumed the stand and testified further, through the interpreter, as follows:

Cross-Examination

By Miss Martin:

Q. You left China in 1935 to come to the United States?

The Court: You mean C. R. 24.

The Interpreter: That's right.

Q. (By Miss Martin): At that time, do you recall whether or not there were any photographs in your home of you or your brothers or your mother?

A. No.

Q. Wasn't there a photograph of your mother and yourself and your younger brothers hanging on the wall in the parlor of your house in the village that you left? A. No.

Q. Do you recall when you arrived in the United States that the Immigration and Naturalization Service asked you a lot of questions?

A. I don't remember what was asked of me.

(Testimony of Tam Hin Soon.)

Q. You do remember you were asked questions and you gave answers? A. Yes.

Q. And you were questioned through an interpreter? [166] A. Yes.

Q. Do you remember that you were asked the following question and gave the following answer:

“Q. Describe your home in the village.

“A. It is a one-story green brick building consisting of two regular bedrooms, two spare bedrooms, two corridors, a parlor and an open court. There are concrete floors in all the rooms and tile roofs. There are two skylights, one in each bedroom. There is an outside window in each of the bedrooms. They are protected with iron bars and wood shutters. No glass. There are no other windows. There are two outside entrances, one on the south side and the other on the north side, which is the large door. There is no shrine locked in the house. There is a loft in each of the bedrooms. There are no clocks, but there is one photograph of my mother, myself, and of my younger brothers and sisters hanging on the wall in the parlor. It is about 10x12.”

Mr. Irwin: 10x12 in what measurement?

Miss Martin: That is the answer.

Mr. Irwin: What is the date of the statement? I don't believe you identified it. [167]

The Court: The question was when he came to the United States. Maybe we'd better establish the date when he did come.

Miss Martin: We have got that established as 1935.

(Testimony of Tam Hin Soon.)

Mr. Irwin: I don't want to be capricious, but she is just reading from an unidentified page. You haven't said it is a part of any document or what date it is. Someone could have slipped it in.

Miss Martin: Suppose I want to read that question from a page I wrote on. I asked if he was asked that question and gave the answer. He has previously testified he was questioned.

The Court: Mr. Irwin wants to know when the question was asked. Was it asked yesterday?

Miss Martin: I laid that foundation. I asked him if he remembered when he came to the United States was he asked questions by the Immigration and Naturalization Service at that time and was it through an interpreter.

The Court: I do remember you did establish that now. Well, I think the objection is not good. You can read the question to the witness and the answer.

The Witness: I said there were only two bedrooms and four sort of corridors. There were two regular bedrooms.

Miss Martin: Don't ask him questions but just tell the reporter what he says and then continue with the question. [168]

The Interpreter: I can't understand him because he talks too fast.

Miss Martin: Will you tell the reporter what he said?

The Witness: There were two regular bedrooms and sort of four corridors.

(Testimony of Tam Hin Soon.)

The Interpreter: Then he was explaining what the corridors are.

Miss Martin: Go ahead.

The Interpreter: What do you want now?

Miss Martin: Ask him, have you finished your explanation about the corridors?

The Interpreter: He said for me to finish reading and then he will explain.

Miss Martin: Is he saying yes now?

The Interpreter: Approval.

The Witness: There are only two openings.

The Interpreter: Shall I go ahead?

Miss Martin: Yes.

The Witness: Yes. It is called the big door.

Miss Martin: All right, continue.

The Witness: Right.

Miss Martin: Go ahead.

The Witness: I never described it as a picture in the house. If there were one, it is different.

Q. (By Miss Martin): Regarding the other items mentioned [169] in the answer, are all the other items correct?

A. Yes. The two bedrooms, then the two other smaller rooms that are spare rooms.

Q. And you told the United States Consul about those facts? A. No, not to the Consul.

Q. To the Immigration. You told it to the Immigration people when you arrived in the United States?

A. I didn't describe that there was a picture in the house.

(Testimony of Tam Hin Soon.)

Q. But you did tell the Immigration about the other facts, about the bedrooms and the green brick building and the two corridors?

A. Yes. I described to the Immigration I had a parlor in my house, two bedrooms and two smaller rooms in the village home.

Q. But you now say you never told them about any photograph in the parlor of yourself, your brothers, and your mother? A. No.

Q. Did you never have a photograph taken of yourself while you were in China?

A. The time when I took pictures was when I had to make applications to come to the United States.

Q. Was that a picture of yourself alone or with your [170] family? A. My own self.

Miss Martin: That's all.

The Court: Any questions?

Mr. Irwin: No, your Honor.

The Court: Well, I notice it is 11:00 o'clock. We will take our recess. We will recess until 15 minutes after 11:00.

Mr. Irwin: May we suggest No. 4 son, who hasn't been interrogated, should be instructed not to converse with the other witnesses?

The Court: Supposing we have the No. 4 son come in here and sit in the jury box during the recess so he can't talk to anybody.

Mr. Irwin: All right.

(Recess.)

Miss Martin: Counsel has agreed to stipulate with me that the last question which I asked the witness Hin Soon where the questions and answers were read, those were from a transcript of a hearing before the Immigration and Naturalization Service on November 6, 1953, at San Pedro, California, in the Matter of Tam Hin Soon, who had then arrived in the United States and was seeking admission to the United States.

Mr. Irwin: With the addition that it was an English transcript.

Miss Martin: An English transcript. [171]

Mr. Irwin: So stipulated, your Honor.

The Court: All right.

Miss Martin: Would your Honor care to ask the same questions of the fourth son?

The Court: Yes. Ask him to take the stand, will you?

TAM FAY HING

recalled as witness by and in behalf of the plaintiffs herein, having been heretofore duly sworn, resumed the stand and testified further, through the interpreter, as follows:

Examination

By the Court:

Q. The other day when you were on the witness stand, some questions were asked you relative to a pass to leave the village and go to Hong Kong. Do you now want to make any statement or any explanation of your testimony the other day?

A. In the one case of the pass, my third brother

(Testimony of Tam Fay Hing.)

was the one that was in charge of it with my mother. When you asked me, I did not remember about the situation at all at that time.

Q. Do you remember now?

A. Now I remember.

Q. How do you happen to remember now?

A. At the time when you asked me, I didn't remember [172] about that situation at all.

Q. Has your brother told you about the pass over the week end?

A. Yes, he told me that there was one.

Q. And that is why you remember now, is that right? A. Yes.

Q. What statement do you want to make now relative to the pass? A. Yes.

Q. Do you want to make a statement about the pass? A. There was a pass.

Q. Did you ever see it?

A. When my brother went to Hong Kong, he lost it. That is why I never saw it.

Q. Did you ever see it?

A. My brother didn't show it to me. He just told me about it.

Q. Then you never did see the pass?

A. No.

Q. All you have is what your brother said, that there was a pass? A. Yes.

Q. On your way from your village to Hong Kong, did you have to show the pass to anyone?

A. No. My brother was in charge of all our arrangements. [173]

(Testimony of Tam Fay Hing.)

Q. Did your brother have to show the pass to anyone? A. I don't remember.

Q. When did your brother tell you that he had sent the pass to his mother at the home village?

A. After we arrived in Hong Kong, not long.

Q. He told you that he had sent the pass back to your mother?

A. That is what he said in Honk Kong.

The Court: I have no other questions.

Direct Examination

By Mr. Irwin:

Q. You haven't talked with me or seen me since we were last in court until you came in here this morning, have you? A. No.

Mr. Irwin: Nothing further, your Honor.

The Court: Miss Martin, do you have anything further?

Miss Martin: No, your Honor.

The Court: All right, you may step down.

(Witness excused.)

Mr. Irwin: Mr. Clerk, does the record show all exhibits which were marked for identification were offered and received in evidence? [174]

The Court: I will make a blanket order. If they weren't admitted in evidence, they may now be admitted.

Mr. Irwin: Except 7, your Honor. That was the blank envelope with nothing in it. It is marked for

identification. It isn't material so I ask to have it withdrawn.

The Court: If there is no objection, 7 can be withdrawn.

Miss Martin: No objection.

Mr. Irwin: Do you see any pertinency in it?

Miss Martin: I have no objection.

Mr. Irwin: On the other hand, your Honor, the father produced it. Maybe I'd better ask to have it received.

The Court: It can be received.

Mr. Irwin: I am always thinking about a possible successor.

Miss Martin: Is there a translation attached to it?

Mr. Irwin: No.

Miss Martin: I object to it being admitted without a translation.

The Court: It may be admitted for whatever purpose it has.

Miss Martin: It can have no purpose at all unless we know what it says.

The Court: It has been marked for identification. It may be admitted, but it has nothing to do with the decision in this case. [175]

Miss Martin: I think we'd better have a translation. We don't know who is going to appeal.

The Court: Can you stipulate the letter can be translated by the interpreter and the translation attached to the letter?

Mr. Irwin: Certainly.

The Clerk: Is that in evidence, then, your Honor?

The Court: In evidence.

(The document referred to was received in evidence and marked Plaintiffs' Exhibit No. 7.)

Mr. Irwin: Whereupon, the plaintiff rests.

Miss Martin: Nothing further.

The Court: Well, I don't think it is necessary for the parties to argue the case. These cases are all based upon a question of fact. These are very difficult and unsatisfactory cases to try, not only from the point of view of the attorneys, but also from the point of view of the court. Citizenship is something that shouldn't be lightly taken away from an individual. On the other hand, it should not be lightly given to an individual unless there is some substantial proof that the individual is entitled to citizenship. When a question of doubt is raised in the mind of the trial judge, he must consider that. I am of the opinion the plaintiff hasn't sustained the burden of proof and there are substantial questions in this case that have arisen in the mind of the court. I feel that [176] there are so many discrepancies in the testimony that the testimony of the witnesses cannot be relied upon. If I had a jury here, I would instruct the jury that if the jury found that a witness was not telling the truth in one instance, the jury could disregard the testimony in other instances if it so desired.

Consequently, I am of the opinion that because of the discrepancies in the testimony between the father and the two sons involved, that the plaintiff has not sustained the burden of proof.

Judgment will be rendered in favor of the government and against the plaintiffs.

Court will now stand in recess until 10:00 o'clock tomorrow morning. [177]

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 24th day of July, 1953.

/s/ S. J. TRAINOR,
Official Reporter.

[Endorsed]: Filed August 14, 1953. [178]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 27, inclusive, contain the original petition to establish nationality, etc.; Application for and Order Appointing Guardian Ad Litem; Answer; Minutes of the Court for December 30, 1952; Findings of Fact and Conclusions

In the United States Court of Appeals
for the Ninth Circuit

No. 13975

TAM DOCK LUNG, as Guardian Ad Litem for
TAM CHUNG FAY and TAM FAY HING,
and TAM CHUNG FAY and TAM FAY
HING,

Appellants,

vs.

JOHN FOSTER DULLES as Secretary of State,
Appellee.

STATEMENT OF POINTS AND DESIGNA-
TION OF RECORD ON APPEAL

To the Honorable United States Court of Appeals
for the Ninth Circuit:

Comes now the appellants, Tam Dock Lung, as
Guardian Ad Litem for Tam Chung Fay and Tam
Fay Hing, and Tam Chung Fay and Tam Fay
Hing, and set forth their statements on appeal and
designation of the record on appeal as follows:

Statement

1. The trial court erred in excluding Tam Chung
Fay and Tam Fay Hing, the real parties in interest
and the plaintiffs, from the court room during the
entire trial and proceedings, except when they were
witnesses.

2. The trial court erred in considering alleged
inconsistencies with reference to the fifth child of

Tam Dock Lung, as he was not a party plaintiff or petitioner herein.

3. The court erred in not declaring the plaintiffs, Tam Chung Fay and Tam Fay Hing, as citizens of the United States, in view of the lack and failure of any evidence to the contrary adduced or introduced by the defendant.

Designation of Record

1. All of reporter's transcript of proceedings on trial.
2. Answer.
3. Minutes December 30, 1952.
4. Findings of Fact and Conclusions of Law.
5. Judgment.
6. Notice of Appeal.
7. Order Extending Time to Docket Appeal.
8. Stipulation and Order Substituting Party Defendant.
9. This designation.
10. Any designation by Appellee of additional portions of Record on Appeal.

/s/ WILLIAM E. CORNELL.

Dated: September 4, 1953.

[Endorsed]: Filed September 7, 1953.

